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Supreme Court of the United States

OCTOBER TERM, 1964

No. 240

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LOCAL UNION NO. 189, AMALGAMATED MEAT  
CUTTERS AND BUTCHER WORKMEN OF NORTH  
AMERICA, AFL-CIO, ET AL., PETITIONERS,

vs.

JEWEL TEA COMPANY, INC.

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

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PETITION FOR CERTIORARI FILED JULY 2, 1964  
CERTIORARI GRANTED OCTOBER 12, 1964



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**APPENDIX :**

**DOCKET ENTRIES.**

Reassigned to Judge La Bny.

Jewel Tea Co., Inc.,  
*Plaintiff,*

*vs.*

Local Unions Nos. 189, 262, 320,  
546, 547, 571 and 638 of Amalga-  
mated Meat Cutters and Butcher  
Workmen of North America—  
AFL-CIO, et al.,  
Associated Food Retailers of Great-  
er Chicago, Inc., and Charles H.  
Bromann,

*Defendants.*

No. 58-C-1415.

Basis of Action: Anti-Trust. Sherman Act. Seeks in-  
junction, \$75,000.00, costs and fees.

**Attorneys:**

**For Plaintiff-Appellant:**

George B. Christensen, Fred H. Daugherty, Richard  
W. Austin, Attorneys.

Counsel—Winston, Strawn, Smith & Patterson, 38  
South Dearborn (3) FI 6-3600.

**For Defendants-Appellees:**

(Locals 189, 262, 320, 546, 547, 571 & 638 Amalga-  
mated Meat Cutters & Butcher Workmen.)

Asher, Gubbins & Segall, Leo Segall, 130 N. Wells  
St., and Bernard Dunau, Jaffee & Dunau, 912  
Dupont Circle Bldg., N. W., (6) CE 6-8224.

Robert C. Eardley, 105 S. LaSalle (3) CE 6-1350.

(For Associated & Chas. H. Bromann, Sidney M.  
Libit, Henry D. Lindauer, and Harry H. Henry,  
77 W. Washington St., (2) RA 6-8268.

*Docket Entries.*

- 7-29-58 Filed complaint and (16) copies. (JS-5) 15.00
- 7-29-58 Issued summons and (16) copies with copies of complaint. g
- 8-5-58 Fld summons retd served 16 services. \$50.00 a
- 8-18-58 Filed Appearance.
- 8-18-58 Enter order to extend to plead (on stipulation) to Sept. 26, 1958.—Perry, J.—Mailed notices, 8-20-58 Draft (1) T
- 8-19-58 Fld appearance of Defts Associated Food retailers of Greater Chicago Inc. & Charles H. Bromann and their attys. (1) a
- 9-23-58 Stipulation to extend time to plead to Oct 6, 1958.—La Buy, J. Draft (1) Mailed notices, 9-26-58. T
- 10-2-58 Filed Motion to dismiss—Motion for oral argument—Proof of Service and Brief of deft Unions in support of motion. co
- 10-2-58 Filed Proof of Service of Motion of defendant unions and their named officers and representative to dismiss complaint, the brief in support thereof and the motion to set for oral argument. (1) F
- 10-6-58 Filed Notice & Motion of defts Bromann, et al. to dismiss complt & proof of service. Win
- 10-6-58 Leave to defts Chas. H. Bromann and Associated Food Retailers of Greater Chgo., Inc. to file motion dismissing complt and to adopt by reference all motions and briefs in support thereof heretofore filed by defts Local Unions 189, 262, et al. and leave to pltf to file answering brief within 30 days—La Buy, J. H
- 10-8-58 Mld ntes 10-8-58. H
- 10-29-58 Filed Stipulation. (1)

*Docket Entries.*

3

- 10-29-58 By agreement of all parties plaintiff's time to file briefs in opposition to mtn to dismiss extended to Nov. 25, 1958.—La Buy, J.  
Mld. Ntes. 11-3-58. E
- 11- 3-58 Motion plaintiff passed case calendar for Jan. 1959 term.—La Buy, J.  
Mld. Ntes. 11-6-58. E
- 11-25-58 Filed stipulation. (1)
- 11-25-58 Stipulation motion for extension of time for plaintiff to file brief in support of complaint and oppose to defendant's motions to dismiss to Dec. 2, 1958.—La Buy, J.  
Mailed notices. 12-1-58. T
- 12- 3-58 Filed Stipulation. (1)
- 12- 3-58. Stipulated motion for extension of time in which plaintiff may file briefs in support of its pleadings and in opposition to defts' motion to dismiss complaint to & including Dec. 16, 1958.—La Buy, J.  
Mld. ntes. 12-5-58. I
- 12-16-58 Filed Stipulation. (1)
- 12-16-58 Enter order by stip time to file brief in support of complaint and in opposition to defts motion to dismiss complaint ext. to and including 1-5-59—Campbell, J.  
Mld. Ntes. 12-18-58. E
- 1- 6-59 On stipulation, extend time in which plaintiff may file briefs in opposition to defendants' motion to dismiss the complaint to Jan. 12, 1959 —La Buy, J.  
Mailed notices. 1-9-59. T
- 1-12-59 Filed Brief of Plaintiff in opposition to Defendants motion to dismiss complaint. & Proof of Service. wek



*Docket Entries.*

- 1-15-59 Filed Stipulation (1)
- 1-15-59 Stipulation to extend time of defendants to file brief to Feb. 15, 1959.—La Buy, J.  
Mailed notices. 1-20-59. T
- 2-12-59 Filed Stipulation. (1)
- 2-12-59 Stip to extd defts time to file reply brfs to March 2, 1959.—La Buy, J.  
Mld. ntes. 2-17-59. Ej
- 3- 2-59 Fld reply brief of deft Unions & their named officers representatives in support of motion. co
- 3- 2-59 Fld proof of service (1) t
- 3-10-59 Filed appearance of Eardley & Ward attys for Local Union Nos. 189, 262, 320, 546, 547 & 638 of Amalgamated Meat Cutters & Butchers Workmen of N. A. AFL-CIO. Ej
- 3-16-59 Filed Notice of Motion and Motion. (2) (1)
- 3-16-59 Order requiring notice of all proceedings be given to Eardley & Ward, co-counsel for deft.—La Buy, J.  
Mailed notices 3-18-59. T
- 3-31-59 Filed Memorandum. (5)
- 3-31-59 Defts motion to dismiss overruled.—La Buy, J. E  
Mld. Ntes. 4-1-59 t
- 4- 3-59 On the Court's own motion cause placed on passed case calendar for May 1959 Term.—La Buy, J.  
Mld. ntes. 4-7-59. I
- 4- 6-59 Filed Notice of Motion, and Motion. (2,2)
- 4- 6-59 Move to vacate the court order of Nov. 31, 1959 contd to Apr 27, 1959.—La Buy, J.  
Mld. ntes. 4-8-59. Ej

*Docket Entries*

5

- 4-24-59 Filed Notice & Motion. (2,2)
- 4-24-59 On motion of Plaintiff continued the oral argument set for Monday, April 27, 1959 to May 13, 1959.—La Buy, J.  
Mld. ntes. 4-28-59. I
- 5-5-59 Cause contd to passed case calendar for Oct. 1959 term.—La Buy, J.  
Mld. Ntes. 5-8-59. E
- 5-13-59 Motion defendant to vacate order entered March 31, 1959 continued to May 15, 1959 for hearing.—La Buy, J.  
Mld. ntes. 5-19-59. I
- 5-15-59 Lv to atty Bernard Dunau of Washington, D. C. Bar to practice in this court for the purposes of this case. Argts on mo defts to vacate order entd March 31, 1959 hd & advsmt.—La Buy, J.  
Mld. ntes. 5-20-59. Ej
- 5-19-59 Defts granted leave to file interlocutory appeal and all further proceedings in this Court suspended and stayed until consideration of this matter by the court of appeals (Draft) (1). Defts motion to vacate order of March 31, 1959 overruling defts' motion to dismiss complaint is denied. Order that certain sentence contained in the court's memorandum regarding the allegations of the complaint be and hereby is deleted pursuant to the courts memo filed this day.—La Buy, J.  
Mld. Ntes. 5-22-59. E  
T
- 5-19-59 Filed Memo. (2) E
- 6-22-59 Filed C. C. of order entered 6-19-59 in U.S.C.A. 7th Cir. granting petition of defendants to appeal. B

- 6-30-59 Clerk's File Copy of Transcript of Proceedings had before Judge La Buy on May 15, 1959, filed by official court reporter. H
- 7-13-59 Filed Stipulation for record on appeal. (2) B
- 7-13-59 Filed Statement required by Rule 12(d) of the U.S.C.A., 7th Cir. of appellee. (1) B
- 7-16-59 Transmitted transcript of record on appeal to U.S.C.A., 7th Cir. B 6 70 pd
- 10-6-59 Motion plaintiff passed case calendar for Jan. 1960 term.—La Buy, J.  
Mld. Ntes. 10-9-59. E
- 1-5-60 Motion of pltf, passed case calendar for March 1960 term.—La Buy, J.  
Mld. ntes. 1-7-60. H
- 3-15-60 Contd. to passed case calendar for June 1960 Term.—La Buy, J.  
Mailed notices 3-18-60. ht
- 4-4-60 Filed Opinion of USCA., and Mandate
- 4-4-60 Ordered and adjudged that the orders are affirmed, with costs, and cause be Remanded.
- 4-4-60 Filed receipt of records from USCA Ej
- 5-9-60 Filed Notice and Motion. (1) (2)
- 5-9-60 Enter order for production of documents—Draft—La Buy, J.  
Mld. ntes. 5-12-60. H
- 6-7-60 Mo pltf passed case calendar for Oct. 1960 Term.—La Buy, J.  
Mld. ntes. 6-10-60. Ej
- 10-4-60 Cause continued to passed case calendar for Jan. 1961 Term.—La Buy, J.  
Mailed notices. 10-10-60. ht
- 1-10-61 Mo pltf cs contd to March 9, 1961 for trial.—La Buy, J.  
Mld. ntes. 1-13-61. Ej



*Docket Entries.*

7

- 5- 1-61 Cause transferred to Judge Hoffman—Ex. Com.  
Mld. ntes. 5-15-61. H
- 5-31-61 Cause to retain its place on the calendar. Hoff-  
man, J.  
Mld. ntes. 6-6-61. t
- 6-20-61 On request of Judge La Buy, cs transferred to  
the Exec Comm for reassignment to Judge La-  
Buy—Hoffman, J.
- 6-21-61 Cause reassigned to Judge La Buy, (Draft) (1)  
—Exec Comm.  
Mld. ntes. 6-23-61. Ej
- 9-11-61 Cause contd. to Sept. 18, 1961 at 10:15 am for  
pre-trial conference.—La Buy, J. ht
- Mailed notices 9-14-61. t
- 9-18-61 Pre-trial conf. held.—La Buy, J. t
- 1-29-62 Filed depn of Edward Thomas Vorbeck t
- 2-28-62 Fld. Interrogatories. P
- 7-25-62 Pre trial conf held. Order def't file answer  
within 15 days from date. Cause set for trial  
Oct. 22, 1962.—La Buy, J.
- 7-27-62 Mld. ntes. sp
- 8- 1-62 Fld answer. t
- 8-17-62 Filed Answer of defts Chas. H. Bromann &  
Associated Food Retailers and Affidavit. H
- 10- 5-62 Filed request for admissions. sp
- 10-15-62 Filed objections to interrogs. sp
- 19-18-62 Filed notice of motion.
- 10-18-62 On mo of pltf trial of cause reset from Oct. 22  
to Oct. 24, 1962—La Buy, J.  
Mld ntes 10-19-62. sp
- 10-24-62 Cause called for trial. Opening statements  
made. Evidence heard in part on behalf of plff  
and cause contd to Oct. 25, 1962 at 10 a.m.  
La Buy, J.  
Mld. ntes. 10-25-62. t

- 10-25-62 Filed amendment to complaint. t
- 10-25-62 Fur evid heard in part on behalf of plff. Plff given leave to file amendment to complt & cause contd to Oct. 26, 1962 at 10 a.m. La Buy, J. t  
Mld. ntes. 10-29-62. mm
- 10-26-62 Fur evid hrd on behalf of plff. Plff rests. Defts motions to dismiss the complt argued and taken under advsmt. Cs contd to Oct. 30, 1962 at 10 a.m. La Buy, J.
- 10-30-62 On mo of deft matter set over until Nov. 2, 1962 at 10 a.m. La Buy, J. t  
Mld. ntes. 10-30-62. mm
- 11- 2-62 Additional evid hrd on behalf of plff. Evid hrd in part on behalf of deft & cause contd to Nov. 5, 1962 at 10:30 a.m. La Buy, J.
- 11- 2-62 Filed memorandum opinion.
- 11- 2-62 Mo to dismiss complt as to deft Bromann & Associated Grocers allowed. Enter judgment on the motion. Motion to dismiss complt as to Local Unions is hereby denied. La Buy, J. t  
Mld. ntes. 11-8-62. m
- 11- 5-62 Fur evid hrd on behalf of deft in part and cause contd to Nov. 7, 1962 at 10 a.m. La Buy, J.
- 11- 7-62 Fur evid heard on behalf of deft and cause contd to Nov. 8, 1962 at 10 a.m. La Buy, J. t  
Mld. ntes. 11-9-62. m
- 11- 8-62 Fur evid hrd in part on behalf of deft and cause contd to Nov. 12, 1962 at 10 a.m. La Buy, J. t  
Mld. ntes. 11-13-62. m
- 11-16-62 On mo of plff trial of cause reset from Nov. 19, 1962 to Nov. 28, 1962. LaBuy, J. t  
Mld. ntes. 11-20-62. m
- 11-28-62 Fld Nte of Motion.

- 11-28-62 Fur evid hrd on behalf of defts. Deft rests.  
Cs contd to Nov. 29, 1962 at 10 a.m. La Buy,  
J. t  
Mld. ntes. 11-30-62.
- 11-28-62 Enter findings of fact, concls of law and judgment order dismissing defts Clark H. Broman and Associated Food Retailers of Greater Chicago, Inc. Draft. La Buy, J. t  
Mld. ntes. 11-30-62. m
- 11-29-62 Rebuttal evid hrd on behalf of plff. Both sides rest. Plff to file brief within 20 days—answering brief 20 days and reply brief within 10 days. Proposed findings of fact & conclusions of law to be submitted & cs taken under advsmt. La Buy, J. t  
Mld. ntes. 12-4-62. m
- 12-14-62 Fld Notice & Motion. t
- 12-14-62 On mo of plff court extds time for filing brief to Dec. 29, 1962, answering brief due within twenty days and reply brief ten days thereafter. La Buy, J. t  
Mld. ntes. 12-19-62 m
- 12-27-62 Filed Notice of Appeal of plaintiff Jewel Tea Co., Inc.
- 12-27-62 Mailed copy of notice of appeal to attys.
- 12-27-62 Filed Bond on Appeal. aim 5.00 PD
- 1-23-63 Filed stipulation.
- 1-23-63 Enter order by stipulation ordered time for filing record and docketing appeal commenced by notice of appeal dated December 27, 1962 extended to and including March 25, 1963.—Campbell, J. aim  
Mld. ntes. 1-24-63. m



- 3-21-63 Filed Stipulation and copy with copies of complaint etc., attached.
- 3-21-63 By stipulation motion to permit plaintiff to use copies for record on appeal—Draft.—La Buy, J. Mailed Notice to Attys. 3-21-63.
- 3-21-63 Transmitted to U.S.C.A., Certified transcript of record. (Copy of stipulation etc., and order 3-21-63.) B
- 3-25-63 Filed Cert. copy of order entered 3-22-63 by U.S.C.A., 7th Circuit, extending the time within which appellant may file remainder of record on appeal until 40 days after the U.S.D.C. shall render judgment as to the remainder of the defendants who are not parties to appeal. (14119) B
- 3-22-63 Enter Memorandum constituting Findings of Fact and Conclusions of Law. Enter order dismissing plaintiff's complaint — Draft. — La-Buy, J. aim  
Mld. ntes. 3-25-63. m
- 4-19-63 Filed Plaintiff's notice of appeal.
- 4-14-63 Filed Bond on appeal. 5.00' pd
- 4-19-63 Mailed copy of notice of appeal to attys, for defendants. B
- 5- 6-63 Filed statement of information under Rule 12(d) of the United States Court of Appeals for the 7th Circuit by Appellees, Associated Food Retailers of Ill. et al. G
- 5- 7-63 Filed Appearance of Certain defendants-appellees, Local Unions, Nos. 189, et al., pursuant to Rule 12 (d). B
- 5-14-63 Filed Cert. copy of order entered 5-13-63 by U.S.C.A., 7th Circuit, extending time for filing remainder of record on appeal to and including May 29, 1963. B

- 5-20-63 Filed stipulation as to contents of record on appeal pursuant to Rule 12 (e) of the U.S.C.A., 7th Cir. G
- 5-23-63 Clerk's file copy of transcript of proceedings had before the Hon. Walter J. La Buy, Judge, on October 24, 25, 26, 30, 1962, and November 2, 5, 7, 8, 28, and 29 1962 filed by the Official Court Reporter 3 vols. G
- 5-24-63 Filed Stipulation with copy of amendment to complaint attached (Orig. amendment filed 10-25-62 not in file). B
- 5-29-63 Transmitted record on appeal to U.S.C.A., (Orig. Exs. and 3 vols. of Trans of Pro. under sep. cert.) B 25.55 pd

United States of America, }  
Northern District of Illinois. } ss.

I, Elbert A. Wagner, Jr. Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original Docket entries in the cause entitled: Jewel Tea Co., Inc., Plaintiff vs. Local Unions Nos. 189 et al., Defendants, No. 58 C 1415.

now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois this 29th day of May, A. D. 1963.

Elbert A. Wagner, Jr.,

*Clerk,*

/s/ Gizella Butcher,

By Gizella Butcher,

*Deputy Clerk.*

1

IN THE UNITED STATES DISTRICT COURT.

• • (Caption—58-C-1415) • •

STATEMENT UNDER RULE 12(c) OF THE  
COURT OF APPEALS.

On July 29, 1958, complaint was filed and summons was issued.

Plaintiff is Jewel Tea Co., Inc., a New York corporation. Defendants are Locals 189, 262, 320, 546, 547, 571 and 638 of the Amalgamated Meat Cutters and Butchers Workmen of North America, AFL-CIO, and their officers, Earl Saltow, Frank Fox, Earl Heinz, Harold L. Rosa, George Flosi, Lester Ferguson, Fred Clavio, Alex M. Nielnowski, Thomas F. Gorman, R. Emmett Kelly, Mark Cantrell, Casimir Walezak, Stanley Brodzinski and William A. Stepan (Called the Union Defendants); and Associated Food Retailers of Greater Chicago, Inc., and Charles H. Bromann (called the Employer Defendants).

On October 2, 1958, the Union Defendants filed a motion to dismiss the complaint.

2 On March 31, 1959, Defendants' motions to dismiss were denied.

On May 13, 1959, the Union Defendants filed a motion to vacate the order of March 31, 1959.

On May 19, 1959, Union Defendants' motion to vacate was denied, but leave was granted for defendants to file an interlocutory appeal.

On June 19, 1959, the Court of Appeals for the Seventh Circuit granted the Union Defendants' petition to appeal.

On January 11, 1960, the Court of Appeals affirmed the District Court and remanded the cause for further proceedings (Docket No. 12653; 274 F. 2d 217).

On February 25, 1960, the Union Defendants filed a petition for certiorari in United States Supreme Court. Said

petition was denied on March 28, 1960 (October Term, 1959, Docket No. 732).

On August 1, 1962, the Union Defendants filed an answer. On August 17, 1962, the Employer Defendants filed their answer.

Commencing on October 24, 1962, the cause came on for trial before Judge Walter J. La Buy, and thereafter the trial continued on the following dates: October 25, 26, November 2, 5, 7, 8, 28 and 29, 1962.

3 On October 25, 1962, plaintiff filed an amendment to the complaint.

On October 26, 1962, at the close of plaintiff's case, defendants moved to dismiss the complaint, and on November 2, 1962, said motion was allowed as to Employer Defendants and denied as to the Union Defendants, the Court filing a memorandum opinion on that date. (Findings of fact, conclusions of law and judgment order dismissing the Employer Defendants were entered on November 28, 1962.)

On December 27, 1962, plaintiff filed a notice of appeal as to the dismissal of the complaint against the Employer Defendants (Said appeal is now in this Court as Docket No. 14119).

On March 22, 1963, the District Court entered a memorandum constituting findings of fact and conclusions of law dismissing plaintiff's complaint, and a notice of appeal from said order was filed on April 19, 1963.

/s/ George B. Christensen,  
George B. Christensen,

/s/ Fred H. Daugherty,  
Fred H. Daugherty,  
38 South Dearborn Street,  
Chicago 3, Illinois,  
*Attorneys for Plaintiff.*

## UNITED STATES DISTRICT COURT.

(Caption—58-C-1415)

## COMPLAINT.

Now comes Jewel Tea Co., Inc., a New York corporation, by its attorneys, George B. Christensen and Fred H. Daugherty, and for its causes of action against Local Unions Nos. 189, 262, 320, 546, 547, 571 and 638 of Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Earl Saltow, Frank Fox, Earl Heinz, Harold L. Rosa, George Flosi, Lester Ferguson, Fred Clavio, Alex. M. Nielubowski, Thomas F. Gorman, R. Emmett Kelly, Mark Cantrell, Casimir Walezak, Stanley Brodzinski and William A. Stepan, and Associated Food Retailers of Greater Chicago, Inc., and Charles H. Brommann, alleges:

1. This action is filed under Section 15 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended (15

U. S. C., Sec. 15), entitled "An Act to protect trade  
6 and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, in order to prevent and restrain continuing violations by the defendants of Sections 1 and 2 of that Act (15 U. S. C., Sec. 1, ff.), damaging to plaintiff's business and property, to obtain an award of damages for the same and/or to obtain a declaration under 28 U. S. C.; Sec. 2201, of the illegality of defendants' conduct hereinafter alleged under said Act of 1890 and/or under the common law.

2. Defendants, Local Unions Nos. 189, 262, 320, 546, 547, 571 and 638 of Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, hereinafter sometimes referred to as "locals" or "local unions," and the officers and representatives thereof, Earl Saltow, Frank Fox, Earl Heinz, Harold L. Rosa, George Flosi,



Lester Ferguson, Fred Clavio, Alex M. Nielubowski, Thomas F. Gorman, R. Emmett Kelly, Mark Cantrell, Casimir Walezak, Stanley Brodzinski and William A. Stepan, and Associated Food Retailers of Greater Chicago, Inc., and Charles H. Bromann, maintain offices and transact the businesses and activities hereinafter specified within the Eastern Division of the Northern District of Illinois, and are found therein. Each of the individual defendants is a citizen of the State of Illinois, and the amount in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars (\$10,000).

3. Plaintiff, Jewel Tea Co., Inc., sometimes herein-  
7 after referred to as "Jewel," is a corporation duly organized under the laws of and is a citizen of the State of New York. It is authorized to do business in Illinois and Indiana. Plaintiff operates 196 retail food stores in and around the Chicago, Illinois, area, including 4 stores in Northwestern Indiana. These stores have meat departments which are engaged in the retail sale of meats for human consumption, which departments are staffed by members of the defendant unions.

4. The defendants are, and they conduct the following businesses or activities:

(a) Locals 189, 262, 320, 546, 547, 571 and 638 of the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, are unincorporated local trade unions or associations of individuals chartered by, and operating under the authority of Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, an International labor organization. Each of these locals maintains places of business in this judicial district. The membership of each of these locals consists of many hundreds of butchers or meat cutters who perform substantially all of the cutting and preparation of meat in all retail meat stores in the Chicago area. Said members

constitute a class so numerous as to make it impracticable to name them all as parties defendant, but defendant officers and representatives of said local unions, named below, fairly and adequately represent the members thereof. Said officers are sued herein individually and as representatives of the members of said locals as a class. Each of the locals has different geographic jurisdiction within the Greater Chicago area but together represent virtually all of the butchers in Chicago, its suburbs and certain other towns in Illinois. Retail sale of meat in any quantity substantial with relation to the population of the Greater Chicago market area and with reasonable continuity is impossible save through employment of the members of said local unions which enjoy a monopoly of persons presently trained, fitted and able to follow the occupation of butchers in the area.

(b) Earl Saltow and Frank Fox are respectively President and Secretary-Treasurer of Local 189. Earl Heinz and Harold L. Rosa are respectively President and Secretary-Treasurer of Local 262. George Flosi is a former President of Local 262, is a business agent thereof, and is a member of or participates in the work of a Joint Negotiating Committee of the local union defendants named above. Lester Ferguson and Fred Clavio are respectively President and Secretary-Treasurer of Local 320. Alex M. Nielubowski is a business agent of Locals 320 and 571 and a member of said Joint Negotiating Committee. Thomas F. Gorman is President of Local 546 and a member of said Joint Negotiating Committee. R. Emmett Kelly is Secretary-Treasurer of Local 546, Vice President of Amalgamated Meat Cutters and Butcher Workmen of North America, an International labor organization, Chairman of said Joint Negotiating Committee, and is a representative of all of said locals. Mark Cantrell is Secretary-Treasurer of Local 547 and is a member of or

participates in the work of said Joint Negotiating Committee. Casimir Walezak and Stanley Brodzinski are respectively President and Secretary-Treasurer of Local 571. William A. Stepan is President and Business Representative of Local 638.

(c) Associated Food Retailers of Greater Chicago, Inc. is a corporation organized under the not-for-profit corporation laws and is a citizen of the State of Illinois with its place of business and offices in Chicago, Illinois. Said corporation, sometimes herein called "Associated," is a trade association which has for its purposes the following:

"To maintain an association for those engaged in the business of retail food and meat distribution; to pledge its membership to the highest standards of service; to acquire, preserve and disseminate valuable trade information; to seek, in every legitimate way, the advancement of its members and, with a due regard of the public welfare, in every way to defend and preserve the principal of individual merchandising; and to promote harmony and encourage friendly intercourse among those engaged in food, grocery and meat distribution."

It represents, for the purposes of collective bargaining and negotiations with labor unions, several thousand individuals or independent food stores engaged in the retail sale of meat for human consumption in the Greater Chicago area.

(d) Charles H. Bromann is Secretary and Treasurer of Associated and from time to time conducts collective bargaining on behalf of the members of Associated with defendant locals.

10 5. Plaintiff's sales at retail of foods, meats, cosmetics, toiletries, kitchen utensils and other goods commonly sold in modern supermarkets were approximately \$285,000,000 in 1957, of which approximately \$280,000,000 was sold in this judicial district. A major part of all of said goods so sold is produced in states other than the State

of Illinois, and is shipped in interstate commerce from such other states into the Chicago area for sale there. Much of the goods sold at retail by plaintiff is purchased from suppliers in the State of Illinois who purchase said goods from out-of-state sources for resale to plaintiff and other retail food stores.

6. Plaintiff's sales of meat, poultry, fish and similar items customarily sold in meat markets were approximately \$85,000,000 in 1957.

7. There are approximately 9,000 retail food stores in the Chicago area which sell meats, fish and poultry; their annual sales of such products exceed \$5,000,000,000. Substantial portions of the meats and allied products sold by the retail food stores in the Chicago area, including those sold by plaintiff, are acquired from without the State of Illinois or are acquired from suppliers in the State of Illinois who have purchased said meats or other products, either in raw or finished state, from without the State of Illinois, intending to resell such meats and other products to meat distributors, wholesalers and retail food stores in the Chicago area. Insofar as plaintiff is concerned, 11 approximately 77.5% of such products retailed by it originate outside the State of Illinois.

8. Members of the general public ordinarily do not make their purchases of meat from packing houses and finish and dress said meats; this service is performed for them by retail meat markets which employ and supervise members of defendant unions, hereinafter sometimes referred to as "butchers," who perform this function. The service performed by retail meat markets in the Chicago area in processing, packing, wrapping, handling and selling frozen and fresh meats is an integral part, and necessary to the movement in interstate commerce of meats which are processed in states other than Illinois, and which are sold in the Chicago area. Retail meat markets are con-

duits through which meats processed and shipped from states other than the State of Illinois are sold and distributed to the consuming public in the Chicago area. The operation of retail meat markets is part of, and necessary to the movement in interstate commerce of meats developed and processed in states other than the State of Illinois and which are sold in the Chicago area.

9. Any restraint upon or disruption in, or interference in the performance with the operation of retail meat markets in the Chicago area necessarily and directly restrains and affects the interstate flow of meat and meat products, and also constitutes a direct and substantial burden and restraint upon the interstate flow of all said meat products consumed by the general public in the  
12 Chicago area.

10. Modern methods of sanitation, refrigeration, display and wrapping of meats permit the operator of a meat market to have cuts of meat appropriate for retail sale cut, trimmed, and otherwise prepared for sale in advance of the customer's order. Such cuts are, and for some time have been, so prepared by members of the defendant unions in numerous of Jewel's stores. Such cuts are wrapped in sanitary, transparent cellophane or similar wrapping, are accurately marked as to weight, price and grade, and are displayed in special refrigerated cases from which customers without contact, advice or further services of any kind from the members of defendant unions may remove such pre-packaged meat as they desire, take it to the store cashier, and purchase it. The special services and skills of the members of defendant unions are not needed after the meat is cut and the only tasks they thereafter perform are to place the prepared cuts in display cases and to keep the cases clean and orderly. This system of vending meat is commonly known as the "pre-packaged, self-service" system. The "pre-packaged, self-



service" system of vending meat permits efficient utilization of the butchers' time in that it enables them to prepare a supply of popular cuts and weights free from interruptions arising from the necessities of serving individual customers and changing from task to task; it is a system favored and desired by many customers because it precludes the necessity of waiting for services of a butcher

13. during congested shopping hours. For all of the foregoing and other reasons, such system of vending meats offers operating economies that enable the market operator to sell to the public at lower prices than are required in the so-called "service system" where the butcher waits for each individual customer's order and then prepares the desired cut.

11. Plaintiff respectfully shows that under the "pre-packaged, self-service" system of vending meat a butcher need not be on duty in the store at the time the customer selects his or her desired cut of meat and actually makes the purchase; that the packaged cuts of meat can be, and are, safely and properly stored, displayed and made available for customer selection and self-service in refrigerated condition so that there is no necessity for members of the defendant unions being on duty in plaintiff's stores at all hours at which meats are actually purchased by customers; that the incidental tasks of arranging the cuts in the cases and cleaning the cases need not be performed continuously throughout store hours and can be performed by others or can be performed by butchers some hours prior to the ending of store hours.

12. Plaintiff shows that in the Chicago area there are thousand of households in which both the husband and wife are gainfully employed during the daytime of Monday through Friday of each week so that the only convenient time for the husband or wife in such households to shop is on Saturdays; that in many of such households cus-

14   tomers desire, and should be able to purchase meat more often than once a week, and desire, and should be able to do so during one or more of the evenings of Monday through Friday. There are thousands of additional households so situated with respect to food stores in the area that it is virtually essential that an automobile be utilized for shopping; an many of such households the family automobile is not available during normal daylight shopping hours Monday through Friday because it is necessary for the husband of the family to use it in connection with his work; such families greatly desire, and should be able to purchase meat in the evenings of one or more of the days Monday through Friday each week. For the foregoing and other reasons there is widespread public demand in the Chicago area that meat be available for retail purchase at Jewel stores during one or more evenings of the week. A survey conducted by plaintiff among a representative cross-section of nearly 20,000 of its customers discloses that approximately 90% of them desire to be able to purchase fresh meats on one or more evenings per week.

13. Plaintiff shows that conditions similar to those above alleged prevail in many of the metropolitan centers of the country and have led in most metropolitan areas other than Chicago to the evening sale of meat through the pre-packaged, self-service system. There are no reasons of health, sanitation or public convenience against such system of evening sale of meats whether the same be

15   with, or without, the presence of butchers on the premises involved. Plaintiff shows that in many of these areas the butchers who cut and prepare in advance the meat so sold through the pre-packaged, self-service system in the evening are members of other local unions of the Amalgamated Meat Cutters and Butcher Workmen of North America.

14. Jewel has approximately 174 stores in the Chicago area presently equipped for the pre-packaged, self-service system of vending meats, and would vend meats in all or most of them one or more evenings a week but for the illegal conspiracy hereinafter alleged, which has the effect of stifling all competition in the sale of most meats for human consumption except between the hours of 9:00 A.M. to 6:00 P.M. Mondays through Saturdays and of denying the public access to the retail market except during such restricted hours.

15. Beginning at least 10 years ago and continuing thenceforth, defendants and their co-conspirators, and others to the plaintiff unknown, have engaged in an unlawful combination and conspiracy to suppress competition among retail meat markets in the Chicago area and to wholly prevent the sale of meat and meat products before 9:00 A.M. or after 6:00 P.M. Mondays through Saturdays, and except during said restricted hours, in unreasonable restraint of trade and commerce among the several states in violation of Section 1, and to monopolize or attempt to monopolize for the members of the defendant unions the retail portion of the trade or commerce in meats in violation of Section 2 of the Sherman Act.

16. The aforesaid combination and conspiracy has consisted of a continuing agreement and concert of action among the defendants and their co-conspirators, the substantial terms of which have been that they agree:

- (a) That no person or firm be permitted to engage in the retail sale of fresh beef, veal, lamb, mutton or pork before 9:00 A.M. or after 6:00 P.M.
- (b) That defendant locals and their officials and representatives named herein refuse to allow members of their organizations to sell fresh beef, veal, lamb, mutton or pork at retail before 9:00 A.M. or after 6:00 P.M.

- (c) That no person or firm be permitted to sell fresh beef, veal, lamb, mutton or pork at retail before 9:00 A.M. or after 6:00 P.M. with or without the employment of members of defendant unions outside those hours.
  - (d) The co-conspirator members of defendant Associated have agreed among themselves to insist that all collective bargaining agreements entered into between them and defendant unions or between defendant unions and plaintiff or other operators of food stores shall contain provisions prohibiting the sale at retail of fresh beef, veal, lamb, mutton or pork before 9:00 A.M. and after 6:00 P.M.
- 17 (e) Associated, its members and officers have conspired and agreed with the other defendants that neither plaintiff nor any other merchandiser is to be permitted to compete lawfully with them by operating self-service meat markets between the hours of 6:00 P.M. and 9:00 P.M.
- (f) That defendant unions, their officers and members have acted as the enforcing agent of the conspiracy.
17. Defendants and their co-conspirators, by agreement and concert of action, have done the things which, as hereinbefore alleged they conspired to do, and, more particularly, have done, among others, the acts and things hereinafter described.
18. For many years past defendant unions, their officers and members, conspiring together with Associated, Bromann, and Associated's employer members, have insisted that all collective bargaining agreements entered into between the unions and operators of retail meat markets in the Chicago area be identical, and have insisted that the

bargaining between all such operators (or their representatives) and the unions be carried on simultaneously and have exercised their monopoly powers to effectuate that insistence.

19. For many years past defendant Associated and its co-conspirator members and Bromann and the defendant unions, their officers and members, have insisted, despite public demand and interest to the contrary,

18 that contracts between defendant unions and all operators of retail meat markets contain provisions prohibiting the retail sale of meat after 6:00 P.M. and have exercised the unions' monopoly powers to effectuate that insistence.

20. In furtherance of this conspiracy, in 1957, when plaintiff and other operators of retail meat markets had collective bargaining agreements with defendant unions which expired on October 5, 1957, the defendant unions summoned all such operators, including plaintiff, to meetings for the purpose of negotiating new agreements. From the outset of these negotiations plaintiff pointed out to defendants that it considered a restriction on its hours of operation illegal and a restraint of trade, and that plaintiff was ready, willing and able to operate its self-service meat markets after 6:00 P.M. on one or more nights a week without requiring any members of defendant unions to work such hours. Defendant Associated refused to enter into an agreement permitting night openings and the defendant unions supported and abetted it in that refusal.

21. Defendant unions threatened to strike and picket any operator who refused to sign a contract which banned evening sales of meat and plaintiff believed, and alleges, that such strike threat was made with authorization of the members of the several unions and would have been carried into effect against Jewel had it not yielded. Plaintiff  
19 shows that it could not have operated its meat departments without the services of numerous members of



the defendant locals (approximately 1,300) normally employed by it. Plaintiff further shows that such a strike and picketing would have inflicted great and severe damage upon it and would, in many areas, have caused great public inconvenience because other unions engaged in delivering and servicing perishable products such as milk, produce, bread, etc., would have honored such picket lines and plaintiff within a short time would have been unable to offer either such products or meats for sale, and many buyers would have been compelled to travel unnecessary distances to obtain such products. Under the compulsion of the conspiracy and the foregoing circumstances plaintiff was forced to sign in late January and early February 1958 contracts with defendant locals which collectively cover all of its stores, sample copies of which are attached hereto, marked Exhibits "1" and "2" and made a part hereof. Each of said contracts contains the following provisions:

"Market operating hours shall be 9:00 a.m. to 6:00 p.m. Monday through Saturday, inclusive. No customer shall be served who comes into the market before or after the hours set forth above."

Each of such contracts extends to October 3, 1959.

22. On or about May 13, 1958, defendant Kelly caused a meeting of sundry officials of defendant locals to be held with representatives of numerous market operators in the area, including plaintiff, for the purpose of announcing that he and the other defendants had learned that in several instances markets had operated after 6:00 P.M., and that if future instances occurred Kelly and the particular local union that might be involved would not proceed under the arbitration provisions of the particular contract that might be involved but would "pull," i.e., remove, the butchers from service from such store or stores for such period of time as they felt necessary to secure future obedience to the hours restriction provisions of the

*Complaint.*

contract. Plaintiff shows that said announcement is a strike threat, that it has not been withdrawn and that it verily believes defendants are prepared to and would carry out said threat if plaintiff operated any of its meat departments after 6:00 P.M.

23. The effects of the aforesaid combination and conspiracy, among others, have been as follows:

- (a) The right of plaintiff to sell fresh beef, veal, lamb, mutton and pork at reasonable hours has been unlawfully restrained and impeded.
- (b) The public has been denied the benefits of competition among retail meat dealers in the Chicago area free from illegal restraints.
- (c) The flow in interstate trade and commerce of meats and meat products has been unlawfully restrained.
- (d) Plaintiff has been restrained from utilizing its right to full use of its own property and facilities without hindrance by illegal restraints.
- (e) The costs of meats at retail in the Chicago area has been held higher than it otherwise would be.
- (f) Plaintiff has lost profits in a large amount, difficult to ascertain exactly but in excess of \$25,000, which it would have gained in the absence of defendants' unlawful conduct.

Wherefore, plaintiff prays:

1. That the Court adjudge, decree and declare that the aforesaid combination and conspiracy entered into by the defendants, and all acts done pursuant thereto, constitute an unlawful restraint of trade and commerce.

2. That the defendants, and each of them, and their directors, officers, agents, employees, and members be enjoined from continuing, renewing or reviving the unlawful

combination and conspiracy hereinbefore alleged or any combination or conspiracy having a similar purpose or effect.

3. That the restriction on hours in which plaintiff may serve the public be declared illegal, null and void, and that defendants be enjoined from enforcing said restriction in Exhibits 1 and 2 hereto or any other rule, contract, or restriction having a similar effect or purpose.

4. That the defendants, and each of them, be enjoined from harassing, intimidating, hindering, striking, or picketing plaintiff for the purpose of restricting plaintiff's 22 hours of operation.

5. That plaintiff be awarded treble damages in the total amount of \$75,000 and costs and attorneys' fees.

6. That plaintiff have such other and further relief as the nature of the case may require and the Court may deem appropriate.

George B. Christensen,  
Fred H. Daugherty,  
*Attorneys for Plaintiff.*

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Financial 6-3600,  
*Of Counsel.*

1957-59

**Amalgamated Meat Cutters and Butcher Workmen  
of North America—AFL-CIO**

Local 262

1896 Sheridan Road, Highland Park, Illinois

Idlewood 2-3316

Affiliated with the:

AFL-CIO

Harold L. Rosa

Secretary-Treasurer

Illinois Federation of Labor

Central Labor Council

**Service Contract.**

**Amalgamated Meat Cutters and B. W. of N. A., AFL-CIO.**

Articles of Agreement governing Service Meat Markets in parts of Lake County and County of Cook, entered into between Jewel Tea Co., Inc. hereinafter called the "Employer," all meat markets and chain store meat markets, all combination Grocery and Meat Markets in parts of Lake County and Cook County; and the Amalgamated Meat Cutters and Butcher Workmen of North America, Local 262 (AFL-CIO) acting as the Collective Bargaining Agent for its members. This Contract approved and passed by the International Executive Board at the General Office the 2nd day of December, 1957.

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## Article 1. General.

Section 1. Consideration. For and in consideration of the mutual promises of the parties hereto and for other good and valuable considerations, receipt of which is hereby acknowledged, this Agreement is entered into.

Section 2. Scope of Contract. It is agreed that this Contract shall govern the hours, wages and other conditions of employment of Employer's meat department employees in Service Meat Markets only within the geographical jurisdiction of Local 262, and that the hours, wages and other conditions of employment of Employer's meat  
24 department employees in Self-Service Meat Markets are covered by a separate contract. It is further agreed that the Employer shall have the sole discretion of determining from time to time which system of merchandising, service or self-service, shall be utilized in each of the Employer's markets; provided that the Employer shall comply with the wages, hours and other contractual conditions of employment pertaining to the system of merchandising used in that market.

## Section 3. Definitions.

(a) Apprentice: An apprentice is an employee who is in training to become a Journeyman butcher. Apprentices must be at least sixteen (16) years of age.

(b) Journeyman: After serving three (3) years of apprenticeship, an employee shall be classified as a Journeyman meat cutter and shall receive the Journeyman rate of pay.

(c) Head Meat Cutter: The term "Head Meat Cutter" means a Journeyman meat cutter who is responsible for the efficient management of the market.

(d) Self-Service and Service: A self-service market is one in which fresh beef, veal, lamb, mutton or pork are

available for sale on a pre-package self-service basis. It is agreed that any market which is operated on a partially service and partially self-service basis shall be classified as a self-service market if any fresh beef, veal, lamb, mutton or pork are made available for sale on a pre-package self-service basis, even though there is also a service counter offering custom cutting for those who prefer it. Such semi-self-service market shall be considered a self-service market subject to the terms and conditions and wage scale contained in the Self-Service Contract.

If no fresh beef, veal, lamb, mutton or pork are sold on a self-service basis, then the market is a Service Market and shall be operated in accordance with this Service Contract. It is further expressly understood and agreed that if all fresh beef, veal, lamb, mutton and pork sold by a market are handled and sold on a service basis only, the fact that a market handles and sells on a self-service basis, delicatessen and other meat products now excepted from the jurisdiction of the Union under this Service Contract shall not operate to classify such market as a self-service market; but such semi-self-service market shall nevertheless be considered a service market subject only to the wage scales, hours and other conditions provided in this Service Contract.

In the event of any dispute as to whether a meat market shall be classed as a service market subject to the terms and conditions of this Service Contract or a self-service market subject to the terms and conditions of the Self-Service Contract, the decision of the Union shall be binding unless and until said decision has been set aside by any arbitration proceedings; provided, however, that either party may require that such dispute be submitted to arbitration forthwith.

Section 4. Notices. All notices required under this Contract shall be deemed to be properly served if delivered in

writing personally or sent by certified mail to the offices of the Union at 1896 Sheridan Road, Highland Park, Illinois, or to the Employer at the address designated below, or to any subsequent address which the Union or the Employer may designate in writing for such purpose. Date of service of a notice served by mail shall be the date on which such notice is post-marked by a post-office of the United States Post Office Department.

Section 5. Partial Invalidity. Nothing contained in this Agreement is intended to violate any Federal Law, Rule, or Regulation made pursuant thereto. If any part of this Agreement is construed to be in such violation, then that part shall be made null and void and the parties agree that they will immediately begin negotiations to replace said void part with a valid provision.

Section 6. Authority of Signing Parties. The parties hereto certify that they are empowered and duly authorized to sign this Agreement.

Section 7. Successors and Assigns. This Agreement shall be binding upon the Employer herein and its successors and assigns.

## Article 2. Jurisdiction.

The Employer recognizes and agrees that said Union is and shall be the sole and exclusive collective bargaining agency for and on behalf of all meat cutters and butcher workmen employed by said Employer on their premises; including those workers processing, packing, wrapping and selling frozen fresh meats.

The parties agree that all fish, poultry, rabbits, meats and its kindred products, fresh or frozen, except:

- (a) sliced boiled, baked or barbecued ham;
- (b) sliced packaged bacon;
- (c) sliced packaged dried beef;

- (d) sliced packaged Canadian bacon;
- (e) smoked sausage, smoked butts, smoked ribs and smoked hocks;
- (f) canned and glassed meats of all kinds;
- (g) all ready-to-eat prepared meats, poultry, and fish;
- (h) frozen packaged fish;
- (i) frozen specialty meat items such as frozen and formed (flaked or shopped) patties and choppettes, with or without butter or vegetable, breaded or unbreaded;
- (j) All meats Not for human consumption;

will be sold, cut, prepared and fabricated by meat department employees, and said cutting, preparing, fabricating and packaging of above products into retail cuts will be done on the premises or immediately adjacent thereto.

Frozen fresh poultry, cut-up or whole, fresh pork sausage, the frozen specialty meat items described above and vacuum or comparably tight wrapped ham slices, shanks, and butts may be prepared by the packer, supplier, or employer off the premises. Frozen fresh poultry, fresh poultry (cut-up or whole) processed on the premises, fresh pork sausage and the frozen meat specialty items described above may be sold from self-service cases after the market hours prescribed in Article V; provided, however, that such products are priced or prepriced by meat department employees on the premises.

25.

## Article 3. Wages.

Section 1. Wage Rates—Weekly, Extra Day and Over-time. Not less than the following wages shall be paid to service market employees during the term of this Contract:

	Minimum Weekly Wage for Basic Workweek	Extra Day Full Day	Rates Half Day	Overtime Rates*
(a) First Contract Year 10/6/57 thru 10/4/58				
Head Meat Cutter.....	\$111.50	\$24.30	\$12.15	\$4.18 (25)
Journeyman .....	105.00	23.00	11.50	3.93 (75)
Apprentices				
0 to 6 Months.....	72.00	16.40	8.20	2.70
6 to 12 Months.....	75.00	17.00	8.50	2.8125
12 to 18 Months.....	78.00	17.60	8.80	2.925
18 to 24 Months.....	81.00	18.20	9.10	3.0375
24 to 36 Months.....	86.00	19.20	9.60	3.225
(b) Second Contract Year 10/5/58 thru 10/3/59				
Head Meat Cutter.....	\$117.50	\$25.50	\$12.75	\$4.4075
Journeyman .....	111.00	24.20	12.10	4.1625
Apprentices				
0 to 6 Months.....	75.00	17.00	8.50	2.8125
6 to 12 Months.....	78.00	17.60	8.90	2.925
12 to 18 Months.....	81.00	18.20	9.10	3.0375
18 to 24 Months.....	84.00	18.80	9.40	3.15
24 to 36 Months.....	89.00	19.80	9.90	3.3375

\* Overtime hourly rates may be rounded off to the nearest quarter-cent, half-cent or whole cent, depending on the Employer's payroll practice.

Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages or working conditions.

Section 2. Payment of Extra Day Rates. The extra day and half day rates shall be paid whenever an employee works the sixth (6th) day of a regular workweek or the fifth (5th) day of a holiday week. These rates provide a \$2.00 premium over the average daily rate for a full day and a \$1.00 premium over the average for a half day.

In the event state or federal legislation is enacted during the term of this contract which requires the payment of time and one-half regular hourly rates of pay for all work



performed in excess of forty (40) hours in a workweek, then effective on the date such law shall become effective such payment of extra day rates and said extra day rate provision shall cease to have any further effect.

Section 3. Extra Help. Extra help shall be paid at the Journeyman extra day rates set out above except in the event that they work the full week when they are to receive the minimum weekly wage set out above for their classification.

#### Article 4. Working Hours and Other Conditions of Employment.

Section 1. Basic Workday. Eight (8) hours shall constitute the basic workday, Monday through Saturday; work to begin at 9:00 a.m. and stop at 6:00 p.m., allowing one hour for lunch, said hour to begin no earlier than 11:00 a.m. nor end later than 2:00 p.m. This is to apply to all markets whether manned by one or more than one employee. Employees must be dressed and ready for work at 9:00 a.m. Monday through Saturday.

Section 2. Basic Workweek. Five (5) days shall constitute the basic workweek, to be worked Monday through Saturday, with one full day off within each shop, for each employee at the Employer's discretion. The day off shall be rotated or changed in accordance with the mutual agreement of the Employer and his employees.

Section 3. Sixth Day Guarantee. Any employee called to work on the sixth (6th) day in any regular workweek, shall be guaranteed four (4) hours' work. Reporting time on the sixth (6th) day shall be either 9:00 a.m. or 2:00 p.m. Head Meat Cutters and Journeymen shall be given preference over Apprentices for work on the sixth (6th) full or half day during a regular workweek and on the fifth (5th) full or half day during a holiday week.

Section 4. Overtime: Overtime may be worked behind locked doors at overtime rates from 8:00 a.m. to 9:00 a.m., after 6:00 p.m., and after eight (8) hours in any one day, at the Employer's discretion.

Section 5. Inventory. Employees shall not take inventory outside of regular working hours.

Section 6. Restrictions on Apprentices. Apprentices may be employed at a ratio of not exceeding two (2) for each five (5) Journeymen employed by the Employer within the jurisdiction of the Local. A quarterly report covering the number of Apprentices employed in relationship to the number of Journeymen shall be furnished the Union. Apprentices shall not work part time or as extra men on Saturdays or the day preceding holidays.

Section 7. Tools. Laundry, tools and sharpening of tools are to be furnished free of cost by Employer.

26 Section 8. Clean-up Time. It is expressly understood that no customer shall be served who comes into the market before or after the hours set forth in Article 5, that all customers in the market at the closing hour shall be served, that all meats will be properly taken care of and the market placed in a sanitary condition. Such work not to exceed fifteen (15) minutes and not to be construed as overtime. Such clean-up time shall not be utilized to prepare for the following day's business and shall not be accumulative from day to day.

Section 9. Rest Periods. Each employee shall have two 10-minute rest periods daily, the first to be taken approximately mid-way in the morning and the second to be taken about midway in the afternoon.

**Article 5. Market Operating Hours.**

Market operating hours shall be 9:00 a.m. to 6:00 p.m. Monday through Saturday, inclusive. No customer shall be served who comes into the market before or after the hours set forth above, except that customers in the market at the closing hour shall be served.

**Article 6. Holidays, Vacations and Other  
Compensable Absences.**

**Section 1. Holidays.** There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day. When and if Victory Day is declared a National Legal Holiday, it shall be made a part of this Article.

Employees who are absent the regularly scheduled work-day before, or after, a holiday, or both, except in the case of proven illness or unavoidable absence shall not receive holiday pay, but shall be paid only for the hours actually worked.

During a holiday week the employee shall receive a full week's pay for four (4) days of work; if an employee works the fifth (5th) day during a holiday week, he shall be paid the extra day or half day rates set out in Article 3.

It is agreed that the Head Meat Cutters and Journeymen will be given preference over Apprentices for work on the sixth (6th) full or half day during a regular work-week, and on the fifth (5th) full or half day during a holiday week.

**Section 2. Vacations.** Any employee who has given service for the course of one year shall be entitled to one week's vacation with pay. After two (2) years of service he shall be entitled to two (2) weeks' vacation with pay. Effective January 1, 1958, all employees having ten (10) years of continuous full-time service shall be entitled to

three (3) weeks of vacation with pay. Unless otherwise mutually agreed upon between Employer and employee, vacation weeks shall be taken consecutively. A man relieving a Head Meat Cutter on vacation shall receive the Contract rate of pay for Head Meat Cutters. In case of dispute the matter shall be referred to arbitration, as provided for in Article 7.

Whenever a holiday listed in Section 1 of this Article falls within an employee's vacation period, the employee shall receive an extra day's pay or a subsequent day off, at the Employer's option.

Section 3. Absences Due to Injuries. Any regular employee unable to work because of injuries received during the regularly scheduled workweek and whose injuries arose out of or during the course of his employment shall be entitled to a full day's pay for each day lost because of such injuries, but not exceeding four (4) days in any such workweek, provided, however, that the employee shall report upon receipt of the injury to the Employer's physician whose decisions with respect to the length of time required off shall be controlling; provided further, that nothing in this provision shall affect any rights accrued to either party under the State Workmen's Compensation Act, and that the Employer shall receive credit for any payment made under this provision should compensation be awarded by the Industrial Commission of Illinois.

#### Article 7. Union-Management Relations.

Section 1. Union Employees. The Union, if requested, will furnish men, insofar as they are available, who will work to the best interest of the Employer in every way, just and lawful, who will give honest and diligent service to patrons of the Employer's establishment, and who will do everything within their power for the uplifting of the meat industry.

**Section 2. Union Shop.** The Employer agrees to employ and keep in employment only such persons who, thirty (30) days after the effective date hereof or thirty (30) days after commencement of employment, whichever is later, are, thereafter continue to remain, members in good standing of said Union. The Employer agrees that, upon written notice from the Union, it will discharge at the Union's request, any person, within a period of fifteen (15) days, who shall not be in good standing.

**Section 3. Union Preference.** When permitted by law, the Employer agrees that when in need of help he will give preference to members in good standing in the Union.

**Section 4. Business Representatives.** Union Business Representatives shall be admitted to the Employer's market premises during the hours meat department employees are working for the purpose of ascertaining whether or not this Agreement is being observed and for collecting dues. Such activities shall be conducted in such a manner as not to interfere with the orderly operation of Employer's business. Business Representatives have full authority and approval from both parties to this Agreement to immediately remove and require the discharge of any men working below the wage scale fixed herein.

**Section 5. Discharge.** No employee shall be discharged without good and sufficient cause; drunkenness, dishonesty, incompetency, incivility or an over supply of help will be sufficient cause for dismissal, or help can be dismissed providing preference be given to Union men in replacing help.

**Section 6. Display of Contract and Union Shop Cards.** This Agreement is to be kept posted in the place of employment so that every employee may have equal and easy access to same.

27 It will be the duty of the Employer to prominently display Union shop cards in all establishments wherein Union meat cutters are employed. These cards shall re-



main the property of the Union, and the Employer shall have their usage only until such time as the Union shall request their return. The Employer agrees to surrender same immediately upon demand by the Union.

**Section 7. Grievances and Arbitration.** All grievances which cannot be adjusted by the Union and the Employer shall be referred to an Arbitration Board consisting of two (2) members to be named by the Union, two (2) by the affected Employer and one to be agreed upon by the four (4) already selected.

No strike, cessation of work, picketing, boycott or lock-out is to occur when arbitration has been requested by either party, provided that the dispute has been heard and decided within a thirty (30) day period from submission.

Grievances of any nature must be made within forty-five (45) calendar days after the cause giving rise to the grievance becomes evident; and wage claims shall not be valid and collectible for a period earlier than ninety (90) days prior to the date of filing the grievance or the date the grievance arose, whichever date is most recent.

**Section 8. Withdrawal Cards.** Any member of Local 262 who is in good standing and is in business for himself who may desire to affiliate with the ..... may apply for a withdrawal card, provided the request be accompanied by the similar request from the ..... Withdrawal card may be obtained upon application to the Executive Board of Local 262.

### **Article 8. Term.**

**Section 1. Initial Term.** This Agreement shall become effective at 12:01 a.m., October 6, 1957, and shall expire at 12:00 midnight, October 3, 1959.

**Section 2. Renewal Term.** If either party wishes to modify this Agreement at its expiration, it shall serve notice in writing of such request upon the other party not

less than sixty (60) days prior to the expiration date. In the absence of the service of such notice, this Contract shall automatically renew itself for a period of one year and from year to year thereafter, it being further agreed that the Contract expiration date shall be the first Saturday in October of each year.

Section 3. Retroactivity. This Contract shall remain in full force and effect until a new agreement is negotiated, but not beyond an additional sixty (60) days beyond the Contract expiration date. Any increases in wages set out in Article 3 resulting from the negotiations following the Contract expiration date shall be retroactive to the date of expiration, but not exceeding ninety (90) calendar days, whichever period shall be shorter. There shall be no retroactivity with respect to other contract changes, such as changes in working hours or premium or overtime pay.

Executed at Highland Park, Illinois, this 24th day of January, 1958.

Local 262, Amalgamated Meat Cutters  
and Butcher Workmen of North  
America, AFL-CIO.

By Alan J. Peterson,

*President.*

By Harold L. Rosa,

*Secretary-Treasurer.*

Employer Jewel Tea Co., Inc.

By E. T. Vorbeck,

*E. T. Vorbeck, Assistant Secretary.*

Employer's Address 1955 West North Avenue,  
Melrose Park, Illinois.

1957-59

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**Amalgamated Meat Cutters and Butcher Workmen  
of North America—AFL-CIO**

Locals 320-571

**Fred Clavio**  
Sec'y-Treas. Local 320

**Alex Nielubowski**  
Business Representative

**Stanley Brodzinski**  
Sec'y-Treas. Local 571  
10615 South Halsted Street

**Self-Service Contract.**

**Amalgamated Meat Cutters and B. W. of N. A.,  
AFL-CIO.**

Articles of Agreement governing Self-Service Meat Markets in the City of Chicago and County of Cook, entered into between Jewel Tea Co., Inc., hereinafter called the Employer, and the Amalgamated Meat Cutters and Butcher Workmen of North America, Locals 320-571 (AFL-CIO), hereinafter sometimes referred to as the Union, acting as the exclusive collective bargaining agent for all employees covered by this Agreement. This contract approved and passed by the International Executive Board at the General Office the 2nd day of December, 1957.

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## 8

**Term**

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**Article 1. General.**

**Section 1. Scope of Contract.** It is agreed that this Contract shall govern the hours, wages and other conditions of employment of Employer's meat department employees in Self-Service Meat Markets only within the geographical jurisdiction of Locals 320-571 and that the hours, wages and other conditions of employment of Employer's meat department employees in Service Meat Markets are covered by a separate contract. It is further agreed that the employer shall have the sole discretion of determining from time to time which system of merchandising, service or self-service, shall be utilized in each of the Employer's markets; provided that the Employer shall comply with the wages, hours and other contractual conditions of employment pertaining to the system of merchandising used in that market.

**Section 2. Definitions.**

(a) **Apprentice:** An apprentice is an employee who is in training to become a Journeyman butcher. Apprentices must be at least sixteen (16) years of age.

(b) **Journeyman:** After serving three (3) years of apprenticeship, an employee shall be classified as a Journeyman meat cutter and shall receive the Journeyman rate of pay.

(c) **Head Meat Cutter:** The term "Head Meat Cutter" means a Journeyman meat cutter who is responsible for the efficient management of the market.



(d) **Self-Service and Service:** A self-service market is one in which fresh beef, veal, lamb, mutton or pork are available for sale on a pre-package self-service basis. It is agreed that any market which is operated on a partially service and partially self-service basis shall be classified as a self-service market if any fresh beef, veal, lamb, mutton or pork are made available for sale on a pre-package self-service basis, even though there is also a service counter offering custom cutting for those who prefer it. Such semi-self-service market shall be considered a self-service market subject to the terms and conditions and wage scale contained in this Self-Service Contract.

If no fresh beef, veal, lamb, mutton or pork are sold on a self-service basis, then the market is a Service market and shall be operated in accordance with the Service Contract. It is further expressly understood and agreed that if all fresh beef, veal, lamb, mutton and pork sold by a market are handled and sold on a service basis only, the fact that a market handles and sells, on a self-service basis, delicatessen and other meat products now excepted from the jurisdiction of the Union under the Service Contract shall not operate to classify such market as a self-service market; but such semi-self-service market shall nevertheless be considered a service market subject only to the wage scales, hours and other conditions provided in the Service Contract.

In the event of any dispute as to whether a meat market shall be classed as a service market subject to the terms and conditions of the Service Contract or a self-service market subject to the terms and conditions of this Contract, the decision of the Union shall be binding unless and until said decision has been set aside by any arbitration proceedings had pursuant to the terms of this Contract; provided, however, that either party may require that such dispute be submitted to arbitration forthwith.

**Section 3. Notices.** All notices required under this Contract shall be deemed to be properly served if delivered in writing personally or sent by certified mail to the offices of the Union at 10615 South Halsted Street, Chicago, Illinois, or to the Employer at the address designated below, or to any subsequent address which the Union or the Employer may designate in writing for such purpose. Date of service of a notice served by mail shall be the date on which such notice is post-marked by a post-office of the United States Post Office Department.

**Section 4. Partial Invalidity.** Nothing contained in this Agreement is intended to violate any Federal Law, Rule, or Regulation made pursuant thereto. If any part of this Agreement is construed by a court or board of competent jurisdiction to be in such violation, then that part shall be made null and void, the remainder of the Contract shall continue in full force and the parties will immediately begin negotiations to replace the void part with a valid provision.

**Section 5. Authority of Signing Parties.** The parties hereto certify that they are empowered and duly authorized to sign this Agreement.

**Section 6. Successors and Assigns.** This agreement shall be binding upon the Employer herein and its successors and assigns.

## **Article 2. Jurisdiction.**

**Section 1. Recognition.** The Employer recognizes and agrees that said Union is and shall be the sole and exclusive collective bargaining agency for and on behalf of all employees in the meat department of said Employer who process, pack, wrap, handle and sell frozen and fresh meats on Employer's premises, and that it will not negotiate with any but the duly elected officers of the Union nor contract with anyone not affiliated with the Union.

**Section 2. Processing.** In Self-Service markets members of the Union shall perform all cutting, preparing,

fabricating, handling and packaging into retail cuts of all fresh fish and rabbits and all fresh or frozen beef, veal, pork, lamb and mutton, said work to be done only on the premises or immediately adjacent thereto; provided, however, that frozen specialty meat items such as the items enumerated in Section 3—Item 6 below, frozen fresh poultry, cut-up or whole and vacuum or comparably tight-wrapped ham slices, shanks and butts may be prepared by the packer, supplier or employer off the premises.

**Section 3. Sale.** In self-service markets members of the Union shall have the exclusive jurisdiction over the sale of all fish, poultry, rabbits and meat, whether frozen fresh or fresh, and delicatessen meats, except sliced packaged bacon, sliced packaged Canadian bacon, canned and glassed meats of all kinds and all meats not for human consumption. The following meats subject to the Union's jurisdiction over sale may nevertheless be sold from self-service cases after the market hours set out in Article 5 provided that Union members stock the cases before 6:00 p.m.

- (1) All delicatessen meats including:
  - (a) Ready to eat prepared meats, poultry and fish;
  - (b) Sliced boiled, baked or barbecued ham;
  - (c) Sliced packaged dried beef;
  - (d) Smoked Sausage;
  - (e) Fresh pork sausage.
- (2) Frozen fresh poultry, cut up or whole;
- 30 (3) Fresh poultry, cut-up or whole, processed on the premises;
- (4) Frozen packaged fish;
- (5) Smoked butts, smoked ribs and smoked hocks;
- (6) Frozen specialty meat items such as frozen and formed (flaked or chopped) patties and choppettes, with or without butter or vegetable, breaded or unbreaded.

## Article 3. Wages.

Section 1. Wage Rates—Weekly, Extra Day and Overtime. Not less than the following wages shall be paid during the term of this Contract:

	Minimum Weekly Wage for Basic Workweek	Extra Day Rates Full Day	Half Day	Overtime Rates*
(a) First Contract Year 10/6/57 thru 10/4/58				
Head Meat Cutter.....	\$114.50	\$24.90	\$12.45	\$4.295
Journeyman .....	108.00	23.60	11.80	4.05
Apprentices				
0 to 6 Months.....	72.00	16.40	8.20	2.70
6 to 12 Months.....	75.00	17.00	8.50	2.81 (25)
12 to 18 Months.....	78.00	17.60	8.80	2.925
18 to 24 Months.....	81.00	18.20	9.10	3.0375
24 to 36 Months.....	86.00	19.20	9.60	3.225
(b) Second Contract Year 10/5/58 thru 10/3/59				
Head Meat Cutter.....	\$119.50	\$25.90	\$12.95	\$4.4825
Journeyman .....	113.00	24.60	12.30	4.23 (75)
Apprentices				
0 to 6 Months.....	75.00	17.00	8.50	2.81 (25)
6 to 12 Months.....	78.00	17.60	8.80	2.925
12 to 18 Months.....	81.00	18.20	9.10	3.0375
18 to 24 Months.....	84.00	18.80	9.40	3.15
24 to 36 Months.....	89.00	19.80	9.90	3.3375

\* Overtime hourly rates may be rounded off to the nearest quarter-cent, half-cent or whole cent, depending on the Employer's payroll practice.

Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages or working conditions.

Section 2. Payment of Extra Day Rates. The extra day and half day rates shall be paid whenever an employee works the sixth (6th) day of a regular workweek or the fifth (5th) day of a holiday week. These rates provide a \$2.00 premium over the average daily rate for a full day and a \$1.00 premium over the average for a half day.

In the event state or federal legislation is enacted during the term of this contract which requires the payment of time and one-half regular hourly rates of pay for all

work performed in excess of forty (40) hours in a work-week, then effective on the date such law shall become effective such legislative requirement shall replace the above provision requiring the payment of extra day rates and said extra day rate provision shall cease to have any further effect.

**Section 3. Extra Help.** Extra help shall be paid at the Journeymen extra day rates set out above, except in the event that they work the full week when they are to receive the minimum weekly wage set out above for their classification.

#### **Article 4. Working Hours and Other Conditions of Employment.**

**Section 1. Basic Workday.** Eight (8) hours shall constitute the basic workday. Work shall begin at 9:00 a.m. and shall cease at 6:00 p.m. One hour shall be allowed for lunch in all markets whether manned by one or more employees, said lunch hour to begin no earlier than 11:00 a.m. and to end no later than 2:00 p.m. There shall be no clean-up time after 6:00 p.m. except clean-up may be performed after 6:00 provided that overtime is paid for all work performed after 6:00 p.m.

**Section 2. Basic Workweek.** Five (5) basic workdays (40 hours) shall constitute the basic workweek which shall be worked—Monday through Saturday, inclusive. One full day off within the week of Monday through Saturday, inclusive, shall be allowed each employee in each shop. The day off shall be at the Employer's discretion except that it may be rotated or changed in accordance with the mutual agreement of the Employer and his employees.

**Section 3. Sixth Day Guarantee.** Any employee called to work on the sixth (6th) day in any regular workweek shall be guaranteed four (4) hours ( $\frac{1}{2}$  day) of work. Reporting time on the sixth (6th) day shall be either 9:00 a.m.



or 2:00 p.m. It is agreed that the Head Meat Cutters and Journeymen shall be given preference over Apprentices for work on the sixth (6th) full or half day during a regular workweek, and on the fifth (5th) full or half day during a holiday week.

Section 4. Overtime. Overtime at overtime rates may be worked behind locked doors from 8:00 a.m. to 9:00 a.m., after 6:00 p.m., and after eight (8) hours in any one day, at the Employer's discretion.

Section 5. Inventory. Employees shall not take inventory outside of regular working hours.

31 Section 6. Restrictions on Apprentices: Apprentices may be employed at a ratio of not exceeding two (2) for each five (5) Journeymen employed by the Employer within the jurisdiction of the Local. A quarterly report covering the number of Apprentices employed in relationship to the number of Journeymen shall be furnished the Union. The Employer agrees to rotate all Apprentices in his markets so as to give them sufficient, well-rounded experience to qualify them as Journeymen at the end of the three (3) year apprenticeship period. Apprentices shall not work part time or as extra men on Saturdays or the day preceding holidays.

Section 7. Tools: Packaging Equipment Restriction. Laundry, tools and sharpening of tools shall be furnished free of cost by Employer.

The kinds of saws, power saws, conveyors, sealing irons, sealing plates, staplers, recording and printing sealers for weighing, vacuum sealing equipment and other tools which the Employer may use shall be determined by the Employer; provided, however, that the Employer shall neither install nor use any automatic packaging equipment not now being used by the Employer, except vacuum sealing equipment, without first securing the Union's approval; it being understood, however, that the Union has approved the installation and use of semi-automatic sealing equipment.

By semi-automatic sealing equipment is meant sealing equipment in which the first application of packaging material and also the first seal is made manually. The functions performed by such semi-automatic sealing equipment shall not be enlarged or extended without the prior approval of the Union.

Section 8. Rest Period. Each employee shall have two (2) rest periods of ten (10) minutes each to be taken daily at the following times: Cutting Room Employees, 10:00 a.m. to 10:10 a.m. and 3:00 p.m. to 3:10 p.m.; Packaging Room Employees including Employees Servicing the Self-Service Counters, 10:10 a.m. to 10:20 a.m. and 3:10 p.m. to 3:20 p.m.

#### Article 5. Market Operating Hours.

Market operating hours shall be 9:00 a.m. to 6:00 p.m. Monday through Saturday, inclusive. No customer shall be served who comes into the market before or after the hours set forth above. In those stores in which the grocery departments remain open after 6:00 p.m. only the following products may be sold after 6:00 p.m.:

- (1) Sliced packaged bacon and Canadian bacon, canned and glassed meats of all kinds, and all meats not for human consumption (being those products excepted from the Union's jurisdiction over sale);
- (2) All delicatessen meats including:
  - (a) Ready to eat prepared meats, poultry and fish;
  - (b) Sliced boiled, baked or barbecued ham;
  - (c) Sliced packaged dried beef;
  - (d) Smoked sausage;
  - (e) Fresh pork sausage.
- (3) Frozen fresh poultry, cut-up or whole;
- (4) Fresh poultry, cut-up or whole, processed on the premises;

*Complaint.*

- (5) Frozen packaged fish;
- (6) Smoked butts, smoked ribs and smoked hocks;
- (7) Frozen specialty meat items such as frozen and formed (flaked or chopped) patties and choppettes, with or without butter or vegetable, breaded or unbreaded.

The parties agree that in the event the market operating hours of service markets are extended at any time during the term hereof the extension shall likewise apply to the market operating hours of self-service markets.

**Article 6. Holidays, Vacations and Other Compensable Absences.**

**Section 1. Holidays.** There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day. When and if Victory Day is declared a National Legal Holiday, it shall be made a part of this Article.

Employees who are absent the regularly scheduled work-day before, or after, a holiday, or both, except in the case of proven illness or unavoidable absence shall not receive holiday pay, but shall be paid only for the hours actually worked.

During a holiday week the employee shall receive a full week's pay for four (4) days of work; if an employee works the fifth (5th) day during a holiday week, he shall be paid the extra day or half day rates set out in Article 3.

**Section 2. Vacations.** Any employee who has given service for the course of one year shall be entitled to one week's vacation with pay. After two (2) years of service he shall be entitled to two (2) weeks' vacation with pay. Effective January 1, 1958, all employees having ten (10) years of continuous full-time service shall be entitled to three (3) weeks of vacation with pay. Unless otherwise

mutually agreed upon between Employer and employee, vacation weeks shall be taken consecutively. A man relieving a Head Meat Cutter on vacation shall receive the Contract rate of pay for Head Meat Cutters.

Whenever a holiday listed in Section 1 of this Article falls within an employee's vacation period, the employee shall receive an extra day's pay or a subsequent day off, at the Employer's option.

Section 3. Absences Due to Injuries. Any regular employee unable to work because of injuries received during the regularly scheduled workweek and whose injuries arose out of or during the course of his employment shall be entitled to a full day's pay for each day lost because of such injuries, but not exceeding four (4) days in any such workweek, provided, however, that the employee shall report upon receipt of the injury to the Employer's physician whose decision with respect to the length of time required off shall be controlling; provided further, that nothing in this provision shall affect any rights accrued  
32 to their party under the State Workmen's Compensation Act, and that the Employer shall receive credit for any payment made under this provision should compensation be awarded by the Industrial Commission of Illinois.

#### Article 7. Union-Management Relations.

Section 1. Union Employees. The Union, if requested, will furnish men, insofar as they are available, who will work to the best interest of the Employer in every way, just and lawful, who will give honest and diligent service to patrons of the Employer's establishment, and who will do everything within their power for the uplifting of the meat industry.

Section 2. Union Shop. The Employer agrees to employ and keep in employment only such persons who, thirty (30) days after the effective date hereof or thirty (30)

days after commencement of employment, whichever is later, are, and thereafter continue to remain, members in good standing of said Union. The Employer agrees that, upon written notice from the Union, it will discharge at the Union's request, any person, within a period of fifteen (15) days, who shall not be in good standing.

Section 3. Union Preference. When permitted by law, the Employer agrees that when in need of help he will give preference to members in good standing in the Union.

Section 4. Business Representatives. Union Business Representatives shall be admitted to the Employer's market premises during the hours meat department employees are working for the purpose of ascertaining whether or not this Agreement is being observed and for collecting dues. Such activities shall be conducted in such a manner as not to interfere with the orderly operation of Employer's business. Business Representatives have full authority and approval from both parties to this Agreement to immediately remove and require the discharge of any men working below the wage scale fixed herein.

Section 5. Discharge. No employee shall be discharged without good and sufficient cause. Drunkenness, dishonesty, incompetency, incivility or an oversupply of help will be sufficient cause for dismissal. Help can be dismissed providing preference be given to Union men in replacing help.

Section 6. Display of Contract and Union Shop Cards. This Agreement is to be kept posted in the place of employment so that every employee may have equal and easy access to same.

It will be the duty of the Employer to prominently display Union shop cards in all establishments wherein Union meat cutters are employed. These cards shall remain the property of the Union, and the Employer shall have their usage only until such time as the Union shall request their



return. The Employer agrees to surrender same immediately upon demand by the Union.

Section 7. Grievances and Arbitration. Should any dispute or grievance arise between the Employer and the Union or between the Employer and its employees, concerning the application and/or construction of this Contract, the parties agree that such matter shall be adjusted, if possible, by negotiations. In the event the dispute or grievance cannot be composed by negotiations within fifteen (15) days after the inception of the matter in dispute, then it shall be submitted immediately to a Board of Arbitration, consisting of three (3) persons, for final and binding decision. Either party may institute said arbitration proceedings by giving the other party notice thereof in writing, naming one person to act on his behalf on said Arbitration Board; and the other party shall, within five (5) days after receipt of such written notice, name one person to act on his behalf on said Arbitration Board. These two (2) so selected shall designate the third (3rd) member or referee of the Board. In the event these two (2) so selected shall be unable, within fifteen (15) days, to agree upon the third (3rd) member or referee, then the third (3rd) member of the Board shall forthwith be designated under the rules and procedures of the Federal Mediation and Conciliation Service. The Board shall hold hearings and render its decision in writing within thirty (30) days with respect to a dispute under Article 1 (d) and within ninety (90) days with respect to any other dispute. The Board's decision shall be final and binding upon both parties. The decision of any two (2) members of the Board shall be the decision of the Board. If the parties shall agree upon one person to act as Arbitrator, his decision shall be as binding as that of a Board of Arbitration. The compensation and expense, if any, of witnesses and the cost of other evidence shall be borne by the

party on whose behalf witnesses are called or the evidence is introduced. Each party shall pay for the compensation and expenses of the Arbitrator appointed by it. The compensation and expenses of the third (3rd) Arbitrator and all other costs incurred in conducting the arbitration proceedings shall be borne equally by the parties hereto.

The Union reserves the right to strike and/or picket the plant of the Employer in the event the Employer shall fail or refuse to comply with any decision of a Board of Arbitration within ten (10) days after notice thereof. The Employer reserves the right to declare a lock-out should the Union fail or refuse to comply with any decision of a Board of Arbitration within ten (10) days after notice thereof.

Grievances of any nature must be made within forty-five (45) calendar days after the cause giving rise to the grievance becomes evident; and wage claims shall not be valid and collectible for a period earlier than ninety (90) days prior to the date of filing the grievance or the date the grievance arose, whichever date is most recent.

Section 8. *Economic Rights.* Nothing herein contained shall limit the right of the Employer or of the Union to make use of such economic rights as such party possesses in event of either a breach of this Contract or the reaching of an impasse on any wage reopening; provided, however, that there shall be no strike, picketing or lock-out for any cause whatsoever during the period of any arbitration proceedings. An arbitration proceeding shall commence on the day either party demands arbitration and shall end on the day the decision is rendered.

Section 9. *Concessions to Other Employers.* The Union agrees that during the term of this Agreement it will not

enter into a contract with any other employer which grants to such other employer the right to operate self-service markets for lesser wages or longer hours or any other condition of employment or market operation more favorable to such other employer than those contained in this Contract except upon the condition that this Employer shall receive the benefit of any more favorable terms granted to such other employer.

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### Article 8. Term.

Section 1. Initial Term. This Agreement shall become effective at 12:01 a.m., October 6, 1957, and shall expire at 12:00 midnight, October 3, 1959.

Section 2. Renewal Term. If either party wishes to modify this Agreement at its expiration, it shall serve notice in writing of such request upon the other party not less than sixty (60) days prior to the expiration date. In the absence of the service of such notice, this Contract shall automatically renew itself for a period of one year and from year to year thereafter, it being further agreed that the Contract expiration date shall be the first Saturday in October of each year.

Section 3. Retroactivity. This Contract shall remain in full force and effect until a new agreement is negotiated, but not beyond an additional sixty (60) days beyond the Contract expiration date. Any increases in wages set out in Article 3 resulting from the negotiations following the Contract expiration date shall be retroactive to the date of expiration, but not exceeding ninety (90) calendar days, whichever period shall be shorter. There shall be no retroactivity with respect to other contract changes, such as changes in working hours or premium or overtime pay.

*Memorandum.*

Executed at Chicago, Illinois, this 29th day of January, 1958.

Locals 320-571, Amalgamated Meat  
Cutters and Butcher Workmen of  
North America, AFL-CIO,

By Alex M. Nielieowski,

*President,*

By Fred Clavio,

*Secretary-Treasurer.*

Employer Jewel Tea Co., Inc.,

By E. T. Vorbeck,

*Assistant Secretary.*

Employer's Address:

1955 West North Avenue,

Melrose Park, Illinois.

41. IN THE UNITED STATES DISTRICT COURT.  
• • (Caption—58-C-1415) • •

MEMORANDUM.

This declaratory judgment suit is brought pursuant to the treble damage section of the anti-trust laws, 15 U. S. C. A. § 15, charging that certain locals of the defendant union and their officers conspired with the Associated Food Retailers of Greater Chicago, Inc., an association of independent retail stores, to suppress competition among retail meat markets in the Chicago area, and to prevent the sale of fresh meats, i.e., beef, veal, lamb, mutton and pork and meat products before 9 A.M. or after 6 P.M. Mondays through Saturdays; and to monopolize for members of the defendant unions the retail portion of the trade or commerce in such meats; that pursuant to such conspiracy, defendants agreed

- (1) that no one be permitted to make retail sales of said fresh meats before 9 A.M. or after 6 P.M.;
- (2) that union members be prohibited from participating in any sale of such meats before 9 A.M. or after 6 P.M.
- (3) that no one be permitted to sell such meats outside these hours with or without employment of union members;
- (4) that defendant members of the Associated Food Retailers agreed among themselves to insist that all collective bargaining agreements between them and defendant union, or between defendant union and plaintiff or other operators, contain the prohibition of retail sales of fresh meats outside these hours;
- (5) that Associated conspired and agreed with other defendants that neither plaintiff nor any other merchandiser is to be permitted to compete with them by operating self-service meat markets between 6 P.M. and 9 P.M.;
- (6) that defendant unions have acted as the enforcing agent of the conspiracy.

It is also alleged that in 1957 when negotiations on new agreements were required because of the expiration of the old agreement, the plaintiff insisted the clause relating to restriction of hours of operation was illegal, and that it was willing and able to operate its self-service markets after 6 P.M. on one or more nights a week without requiring any members of defendant union to work such hours; that defendant Associated refused to enter into an agreement to permit night openings and defendant union supported and abetted such refusal; that defendant union threatened to strike and picket any operator who refused to sign such contract and under compulsion of said con-



*Memorandum.*

spiracy plaintiff did sign the agreement, that in May 1958 defendant Kelly, an officer of Local 546 of defendant union, at a meeting with representatives of market operators in this area reported that he and other defendants had learned in several instances markets had been operated outside the designated hours, and that if such continued there would be no arbitration procedure followed and that butchers would be removed from service in such stores.

It is further alleged that the effect of this combination and conspiracy has been the unlawful restraint of (1) plaintiff's right to sell fresh pre-cut meats at reasonable hours; (2) competition among retail meat dealers and consequent denial to the public of the benefits thereof, and that the cost of meats at retail in Chicago has been held higher than it otherwise would be; (3) interstate trade and commerce of meats and meat products in that a major part of all of said goods is produced in states other than the

State of Illinois and is shipped in interstate commerce  
43 from such states, and, insofar as plaintiff is concerned in 1957 its sales of meat, poultry and fish was \$85,000,000 and approximately 77.5% of such products retailed by it originate outside the State of Illinois; and (4) plaintiff's right to freely use its property and facilities with a consequent loss of profits in excess of \$25,000.

It is requested that the court declare the alleged conspiracy and combination an unlawful restraint of trade and commerce; that defendants be enjoined from continuing the same; that the restriction on hours of marketing be declared illegal, null and void and that defendants be enjoined from enforcing the same; that the defendants be enjoined from harassing, intimidating, hindering, striking or picketing plaintiff for the purpose of restricting the hours of marketing.

In the pertinent parts to be considered here, the collective bargaining agreement in Article 4 covers Working

Hours and other conditions of employment expressly confining the basic work day to eight hours, work to begin at 9 A.M. and stop at 6 P.M. Article 5 which follows covers Market Operating Hours, and is the clause which is challenged in these proceedings. It provides.

"Market operating hours shall be 9 A.M. to 6 P.M. Monday through Saturday, inclusive. No customer shall be served before or after the hours set forth above, except that customers in the market at closing time shall be served."

Defendants have filed a motion to dismiss the complaint for the reason (1) that because the complaint alleges the clause restricting market hours is null and void, the plaintiff being a party to the contract is in pari delicto and can not recover any damages; and, in any event has suffered no injury; (2) the alleged activities and contract provision do not affect interstate commerce; (3) the alleged activities are not within the proscription of the antitrust laws since the clause is a reasonable regulation of trade; (4) the alleged controversy regulating market operating 44 hours constitutes a labor dispute over which this court has no jurisdiction; and (5) the alleged controversy comes within the labor exemption to the antitrust law.

The general premise guiding courts in their considerations on motions to dismiss complaints is to be applied in this case as well; that is, would the plaintiff be entitled to relief upon any state of facts which might be proved in support of its allegations.

At the outset, it is established that the fact that a labor union is a defendant under proceedings for violation of the antitrust laws does not per se bring it within the exemption from suit contained in § 6 of the Clayton Act (15 U. S. C. A. § 17) or injunction contained in § 20 of the Clayton Act. (29 U. S. C. A. § 52). The decision of the

Supreme Court of the United States in *Allen Bradley Co. v. Union*, (1944) 325 U. S. 808, declared that

"Congress did not intend by the Clayton or the Norris-La Guardia Act that labor unions could, consistently with the Sherman Act, aid non-labor groups to create business monopolies and to control the marketing of goods and services."

The Norris-La Guardia Act was specifically intended to protect the normal activities of workingmen to form a union and to act together to further their interests as members of the union even though such union activities might to some extent affect interstate commerce, 29 U. S. C. A. § 104, but where labor unions combine upon objects outside the field of labor relations they do become amenable to the Sherman Act. *Internat'l Assn. Bridge, Structural & Ornamental Iron Workers v. Pauly Jail Bldg. Co.*, (C. A. 8, 1941) 118 F. (2d) 615, 621 cert. den. 314 U. S. 639.

The challenged provision is contended and alleged by plaintiffs to be the means of effectuating the alleged combination and conspiracy; but, the defendants assert its purpose is related solely to employer-employee relationship and its existence is an integral part of the terms and conditions of employment. On a motion to dismiss this question is not possible of determination. Restrictive union rules with limit market distribution would seem to be within the purview of the antitrust laws if the conditions of interstate commerce and intent are met. The complaint alleges a joinder of purpose between union and independent employers inimicable to legitimate objectives of labor organizations and sufficiently places in doubt the objective sought to be attained.

It is also sufficiently alleged that this provision has the effect of restraining interstate commerce. Local restraints having an adverse effect on such commerce are within the

prohibition of the antitrust laws. *United States v. Employing Plasterers*, (1954) 347 U. S. 186. The allegations of the complaint aver that customers purchase less meats due to the market hour restriction and that the interstate supply and shipment thereof is affected.

It is also clear that the determination of the efficacy of the defense of *pari delicto* raised by defendants on their motion to dismiss cannot be made at this time and on this state of the pleadings. While a party to an illegal contract usually cannot invoke the aid of a court in its enforcement, as a general rule where the contract is violative of a statute, a party will not be barred from setting up its illegality, particularly when it will further the public interest which the statute was designed to protect.

The Court is of the opinion that the complaint does state a claim for relief under the antitrust statutes and the defendants motion to dismiss should be overruled. An order in accord therewith has this day been entered.

Walter J. La Buy,  
*Judge, United States District Court.*

March 31, 1959.

Winston, Strawn, Smith & Patterson,  
38 South Dearborn Street (3);

Asher, Gubbins & Segall,  
130 N. Wells Street (6).

64

*Letter, Court to Counsel.*

46

IN THE UNITED STATES DISTRICT COURT.

• • (Caption—58-C-1415) • •

This cause having been heretofore taken under advisement by the Court on defendants' motion to dismiss the complaint, after due consideration and the Court being fully advised files herein its memorandum opinion, in accordance with which it is

Ordered that said motion to dismiss the complaint be and it hereby is overruled.

87

UNITED STATES DISTRICT COURT.

Chicago 4.

Chambers of

Judge Walter J. La Buy

May 19, 1959

Winston, Strawn, Smith & Patterson,  
38 South Dearborn Street,  
Chicago 3, Illinois.

Asher, Gubbins & Segall,  
130 North Wells Street,  
Chicago 6, Illinois.

Re: Jewel Tea Co. v. Local Unions,  
58 C 1415.

Gentlemen:

The court has considered defendants' motion to vacate the order of March 31, 1959 overruling defendants' motion to dismiss the complaint in the above cause and is of the opinion said motion should be and hereby is denied.



During the course of oral arguments on the motion to vacate, defendants' counsel called the attention of the court to an erroneous statement contained in the court's memorandum regarding the allegations of the complaint. On page 5 in the first full paragraph, last sentence, the court said:

"The allegations of the complaint aver that customers purchase less meats due to the market hour restriction and that the interstate supply and shipment thereof is affected."

This appears in plaintiff's brief pages 23-24 and was mistakenly stated to be contained in the complaint. The sentence is hereby ordered deleted from the memorandum of the court.

The court is further of the opinion that defendants' oral request for an order permitting an interlocutory appeal 88 from the orders of this court should be allowed. Accordingly, the court has entered such an order, copy of which is attached hereto.

Very truly yours,

/s/ Walter J. La Buy,

*Judge.*

OJ

Enc.

*Order re: Interlocutory Appeal.*

IN THE UNITED STATES DISTRICT COURT.

• • (Caption—58-C-1415) • •

Tuesday, May 19, 1959.

Present: Honorable Walter J. La Buy, District Judge.

After due consideration and the Court being fully advised files herein its memorandum opinion and in accordance therewith it is

Ordered that the defendants' motion to vacate the order of March 31, 1959 overruling the defendants' motion to dismiss the complaint be and it hereby is denied and it is

Further Ordered that the last sentence in the first full paragraph on page 5 of the Court's memorandum filed March 31, 1959, where the Court said:

"The allegations of the complaint aver that customers purchase less meats due to the market hour restriction and that the interstate supply and shipment thereof is affected."

be and it hereby is deleted from said memorandum.

IN THE UNITED STATES DISTRICT COURT.

• • (Caption—58-C-1415) • •

**ORDER.**

This cause came on to be heard on the motion of defendants to vacate the order of this court entered March 31, 1959, and for permission to file an interlocutory appeal therefrom;

The court being of the opinion that the orders denying defendants' motion to dismiss and motion to vacate said order involve controlling questions of law as to which there is substantial ground for difference of opinion and that an immediate appeal from these orders will materially

advance the ultimate termination of the litigation concludes that an appeal should be permitted to be taken from the orders at this time pursuant to § 1292(b), 28 U.S.C.A.;

It is therefore ordered that the defendants be granted leave to file their interlocutory appeal, and said order shall suspend and stay all further proceedings in this court pending consideration of this matter by the Court of Appeals.

/s/ Walter J. La Buy,  
*Judge, United States District Court.*

May 19, 1959.

91 UNITED STATES OF AMERICA, ss:

The President of the United States of America.

To the Honorable the Judges of the United States District Court for the Northern District of Illinois, Eastern Division, Greeting:

Whereas lately in the United States District Court for the Northern District of Illinois, Eastern Division before you, or some of you, in a cause between Jewel Tea Co., Inc., Plaintiff vs. Local Unions Nos. 189, 262, 320, 546, 547, 571 and 638 of Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, et. al., Defendants, No. 58 C 1415. Orders were entered on the thirty-first day of March, 1959 and nineteenth day of May, 1959, 91-A as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Court of Appeals for the Seventh Circuit by virtue of an appeal granted by the United States Court of Appeals to the Defendants, agreeably to the act of Congress, in such case made and provided, fully and at large appears.

*Mandate of Court of Appeals.*

92 And Whereas, in the term of September, in the year of our Lord one thousand nine hundred and fifty-nine, the said cause came on to be heard before the said United States Court of Appeals for the Seventh Circuit, on the said transcript of record, and was argued by counsel.

On Consideration Whereof, it is ordered and adjudged by this court that the orders of the said District Court in this cause appealed from be, and the same are hereby, Affirmed, with costs, and that this cause be, and it hereby, Remanded to the said District Court for further proceedings not inconsistent with the views expressed in the opinion of this Court filed this day, Monday, January 11, 1960.

93 You, therefore, are hereby commanded that such further proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness, the Honorable Earl Warren, Chief Justice of the United States, the first day of April, in the year of our Lord one thousand nine hundred and sixty.

/s/ Kenneth J. Carrick,  
Clerk of the United States Court of  
Appeals for the Seventh Circuit.

(SEAL)

UNITED STATES DISTRICT COURT.  
(Caption—58-C-1415)

ANSWER.

This answer is filed by defendant unions and their named officers and representatives. References in the answer to "defendants" are to these defendants only.

1. Answering the allegations of paragraph 1, defendants admit that the action is brought under 15 U.S.C. § 15 and 28 U.S.C. § 2201.

2. The allegations of paragraph 2 are admitted, except that the individual referred to as Mark Cantrell is probably intended to refer to Mark Allen, the individual referred to as Fred Clavio is probably intended to refer to Frank Clavio, and the individual referred to as Alex M. Nielowski is probably intended to refer to Alex M. Nielowski. It is denied that the amount in controversy exceeds the sum of \$10,000.

95 3. The allegations of paragraph 3 are admitted, except that defendants are without knowledge as to the precise number and precise locations of the stores.

4(a). The allegations of paragraph 4(a) are admitted, except that it is denied that this is properly a class action and it is denied that the words "a monopoly of persons" is a proper description.

4(b). The allegations of paragraph 4(b) are admitted, except as qualified in paragraph 2 of the answer, and except that it is denied that R. Emmett Kelly "is a representative of all of said locals."

4(c). The allegations of paragraph 4(c) are admitted, except that defendants are without knowledge as to the quotation describing Associated's "purposes." The membership of Associated comprises operators of service markets, self-service markets, and multiple stores.



4(d). The allegations of paragraph 4(d) are admitted.

5. The allegations of paragraph 5 are admitted, except that defendants are without information as to the volumes alleged other than to aver that they are substantial.

6. Answering the allegations of paragraph 6, defendants are without knowledge as to the volume alleged other than to aver that it is substantial.

7. The allegations of paragraph 7 are admitted, except that defendants are without knowledge as to the volumes alleged in the first sentence other than to aver that they are substantial, and defendants are without knowledge as to the percentage alleged in the last sentence.

96 8. The allegations of paragraph 8 are denied, except for the first sentence of that paragraph which is admitted.

9. The allegations of paragraph 9 are denied.

10. Answering the allegations of paragraph 10, defendants admit the first two sentences of the paragraph and so much of the third sentence as reads that: "Such cuts are wrapped in sanitary, transparent cellophane or similar wrapping, are accurately marked as to weight, price and grade, and are displayed in special refrigerated cases. . . ." Defendants also admit that "This system of vending meat is commonly known as the 'pre-packaged, self-service' system." In all other respects the allegations of paragraph 10 are denied.

11. The allegations of paragraph 11 are denied.

12. The allegations of paragraph 12 are denied.

13. Answering the allegations of paragraph 13, defendants admit that there are metropolitan areas other than Chicago in which meat is sold evenings through the pre-packaged self-service system, and that butchers in these areas are members of local unions affiliated with Amalgamated Meat Cutters and Butcher Workmen of North America. In all other respects the allegations of paragraph

13 are denied. Defendants aver that there are metropolitan areas other than Chicago in which meat is not sold evenings notwithstanding the operation of the pre-packaged, self-service system in these areas.

14. Answering the allegations of paragraph 14, defendants admit that plaintiff has "stores in the Chicago area presently equipped for the pre-packaged, self-service system of vending meats. . . ." Defendants are without

97 knowledge as to the precise number of such stores. In all other respects the allegations of paragraph 14 are denied.

15. The allegations of paragraph 15 are denied.

16. The allegations of paragraph 16 are denied.

17. The allegations of paragraph 17 are denied.

18. The allegations of paragraph 18 are denied.

19. The allegations of paragraph 19 are denied.

20. The allegations of paragraph 20 are denied, except that defendants admit that meetings for the purpose of negotiating new agreements were held and that during these meetings plaintiff expressed its opinion that to require that marketing hours in the retail sale of meat cease after 6:00 p.m. was an illegal restraint of trade.

21. The allegations of paragraph 21 are denied, except that defendants admit that plaintiff signed collective bargaining agreements in late January and early February 1958, true copies of which are appended to the complaint as Exhibits 1 and 2; that the agreements contained a provision as quoted in paragraph 21; and that the agreements extended to October 3, 1959.

22. The allegations of paragraph 22 are denied, except that defendants aver that market operators were apprised of the necessity of complying with the provision of the collective bargaining agreements pertaining to market operating hours.

23. The allegations of paragraph 23 are denied.

**First Defense.**

24. Plaintiff is without standing to maintain the action because (a) it is in pari delicto, and/or (b) it sustains no injury.

98

**Second Defense.**

25. The alleged restraint does not affect interstate commerce and therefore is not within the purview of the Sherman Antitrust Act.

**Third Defense.**

26. The alleged restraint constitutes a reasonable regulation of trade and therefore is not within the prohibition of the Sherman Antitrust Act.

**Fourth Defense.**

27. The alleged restraint embodies an agreement upon a mandatory subject of collective bargaining, is otherwise within the exclusive regulatory scope of the National Labor Relations Act, and is therefore outside the jurisdiction of the Court.

**Fifth Defense.**

28. The alleged restraint is within the labor exemption to the Sherman Antitrust Act.

**Sixth Defense.**

29. The complaint does not state claim within the jurisdiction of the Court or upon which relief can be granted. Wherefore, having fully answered, defendants pray that the complaint be dismissed and that they have their costs.

/s/ Leo Segall,

Lester Asher,

Joseph E. Gubbins,

Leo Segall,

130 North Wells Street,

Chicago 6, Illinois.

/s/ Bernard Dunau,

912 Dupont Circle Building, N. W.,

Washington 6, D. C.

100

UNITED STATES DISTRICT COURT.

• • (Caption—58-C-1415) • •

**ANSWER OF DEFENDANTS CHARLES H. BROMANN AND ASSOCIATED FOOD RETAILERS OF GREATER CHICAGO, INC.**

Now comes defendants Associated Food Retailers of Greater Chicago, Inc. hereinafter sometimes referred to as "Associated" and Charles H. Bromann hereinafter sometimes referred to as "Bromann" by their attorneys and answers each correspondingly numbered paragraphs of the Complaint as follows:

1. Admits that the Complaint purports to state a claim under the Acts of Congress specified in Paragraph 1, but denies that a cause of action has arisen against the defendants under said Acts:

101 2. Admits that the defendants Associated and Bromann maintain offices and transact business within the Eastern Division of the Northern District of Illinois, and are found therein, but deny that the amount in controversy exceeds the sum of Ten Thousand Dollars (\$10,000.00). Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 2.

3. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3.

4. (a) Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 (a).

(b) Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4. (b).



(c) Admits the allegations of Paragraph 4 (c) except that defendants deny that they represent "several thousand individual or independent food stores engaged in retail sale of meat" and state that the number is less than one thousand.

102 (d) admits the allegations of Paragraph 4 (d).

5. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5.

6. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6.

7. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7.

8. Admits the allegations contained in the first sentence of Paragraph 8 but denies all other allegations in said Paragraph 8.

9. Denies the allegations of Paragraph 9.

10. Admits the allegations contained in the first two sentences of Paragraph 10 and the sentence which reads "This system of vending meat is commonly known as the 'pre-packaged, self-service' system." As to all other allegations contained in Paragraph 10, defendant Bromann is without knowledge or information sufficient to form an independent belief as to their truth, and the members, directors and officers comprising defendant Associated are without a uniform opinion as to the truth of said allegations.

11. Defendant Bromann is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11, other than to aver that in his opinion a self-service meat market cannot operate in an efficient and successful way for an appreciable period of time without employees on duty. The directors, officers and members of defendant Associated do not have a uniform opinion as to the truth of the allegations of Paragraph 11.



12. Denies the allegations of Paragraph 12 except that as to the allegation "Such families greatly desire, and should be able to purchase meat in the evenings of one or more of the days Monday through Friday each week", the directors, officers and members of defendant Associated do not have a uniform opinion as to the truth of said allegation.

13. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13.

14. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 14.

104 15. Denies the allegations of Paragraph 15.

16. Denies the allegations of Paragraph 16.

17. Denies the allegations of Paragraph 17.

18. Denies the allegations of Paragraph 18.

19. Denies the allegations of Paragraph 19.

20. Admits that meetings were held for the purpose of negotiating new agreements and that at these negotiations Plaintiff stated that it considered a restriction on its hours of operation illegal and a restraint of trade. Defendants deny the remaining allegations of Paragraph 20.

21. Defendants deny that the Unions made any direct threat to strike and picket any operator who refused to sign the contract which banned evening sales of meat but defendants did recognize that in the process of collective bargaining Unions do have the power to strike and picket. Defendants admit that the Articles of Agreement finally negotiated contained the provision as quoted in Paragraph 21 of plaintiff's Complaint. Defendants deny the remaining allegations of Paragraph 21.

105 22. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 22.

23. Denies the allegations of Paragraph 23.

**Affirmative Defenses.**

1. For a first affirmative defense defendants Bromann and Associated alleged that they negotiated with defendant Unions at arms length, in good faith and in the same manner as did the plaintiff, other corporate chains and other independents and that all of the terms of the Articles of Agreement as contained in plaintiff's Exhibit 1 and Exhibit 2 were arrived at by the process of collective bargaining.

2. For a second affirmative defense defendant Bromann alleges that he is employed by defendant Associated and acted as the Agent of Associated, negotiating with the defendant Unions under the direction and instructions of the directors of Associated; at no time did Bromann receive a unanimous direction to demand a 6 o'clock closing nor did Bromann at any time make a demand for a 6 o'clock closing.

106 3. For a third affirmative defense defendants Bromann and Associated alleged that they finally submitted to the contracts demanded by the Union for the same reason that plaintiff and all other employers submitted to said contracts; namely, because the terms of the Agreement taken as a whole were the best obtainable without risking a strike by insistence upon better terms.

4. For a fourth affirmative defense defendants alleged that neither plaintiff, nor Associated, nor any employer signatory to the Agreements could lose any rights or suffer any damage because of the following provisions contained in plaintiff's Exhibits 1 and 2:

Service Contract—"Section 5. Partial Invalidity. Nothing contained in this Agreement is intended to violate any Federal Law, Rule, or Regulation made pursuant thereto. If any part of this Agreement is construed to be in such violation, then that part shall

be made null and void and the parties agree that they will immediately begin negotiations to replace said void part with a valid provision."

- 107 Self-Service Contract—"Section 4. Partial Invalidity. Nothing contained in this Agreement is intended to violate any Federal Law, Rule, or Regulation made pursuant thereto. If any part of this Agreement is construed by a court or board of competent jurisdiction to be in such violation, then that part shall be made null and void, the remainder of the Contract shall continue in full force and the parties will immediately begin negotiations to replace the void part with a valid provision."

The foregoing provisions provided a specific remedy and method of procedure where anything contained in the Agreements were illegal.

5. For a fifth affirmative defense defendants allege that the restraint complained of is a fundamental part of a collective bargaining agreement arrived at through collective bargaining and therefore governed by the National Labor Relations Act and not subject to the jurisdiction of the Court.

108 6. For a sixth affirmative defense defendants allege that the restraint complained of has no bearing upon Interstate Commerce and is therefore not within the prohibition of the Sherman Anti-Trust Act.

7. For a seventh affirmative defense defendants allege that the alleged restraint applies to and affects all signatory employers equally and therefore no employer has been damaged or has sustained any injury.

8. For an eighth affirmative defense defendants allege that the alleged restraint comprises a reasonable regulation of trade and is therefore not within the prohibition of the Sherman Anti-Trust Act.

9. For a ninth affirmative defense defendants allege that the alleged restraint falls clearly within the labor exemption of the Sherman Anti-Trust Act.

Wherefore the defendants ask that judgment be entered in its favor, dismissing the action of the plaintiff and discharging defendants with costs of this action.

/s/ Harry H. Henry,  
Sidney M. Libit,  
Henry D. Lindauer,  
Harry H. Henry.

Libit, Lindauer & Henry,  
77 W. Washington St.,  
Chicago, Illinois.

### AMENDMENT TO COMPLAINT.

Now comes Jewel Tea Co., Inc., a New York corporation, by its attorneys, George B. Christensen and Fred H. Daugherty, leave of court being first duly had and obtained, and amends its complaint by striking Paragraph 5 of the prayer thereof and substituting the following:

5. That plaintiff be awarded damages in the amount of Seventeen Million Dollars, trebled, and costs and attorneys' fees.

/s/ George B. Christensen,

/s/ Fred H. Daugherty.

Winston, Strawn, Smith & Patterson,  
38 South Dearborn Street,  
Chicago 3, Illinois,  
Financial 6-3600,  
*Of Counsel.*

1           IN THE UNITED STATES DISTRICT COURT.  
          • • (Caption—58-C-1415) • •

Transcript of proceedings had in the trial of the above entitled cause, before the Hon. Walter J. La Buy, one of the Judges of said Court, sitting in his courtroom, Room 600 United States Courthouse, Chicago, Illinois, on Wednesday, October 24, 1962, at 10:00 o'clock A.M.

10   R. EMMETT KELLY, called as an adverse witness by the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Mr. Kelly, will you please state your full name for the record?

A. Mr. R. Emmett Kelly.

Q. Where do you live?

A. 18 Meadowview Drive, Northfield.

Q. Illinois?

11   Q. How old are you?

A. 54.

Q. Where were you born?

A. In Chicago, sir.

A. In Chicago, approximately 35 years.

Q. What education have you had, Mr. Kelly?

A. I have had a grade school education, a high school education, and three years at the University of Notre Dame.

Q. Would you be good enough to tell the Court what your working history has been?



A. In 1931, I came to Local Union 546 that I now represent, and I have been with the organization since that time.

12 Q. Prior to that time, Mr. Kelly, had you done any work in butcher shops?

A. Yes, sir, I had.

Q. Would you describe that just briefly?

A. Well, during my very early years, when my father was a meat cutter, I worked with him in a market known as Trainor's Market.

Q. And where was that market located?

A. At Sacramento and Harrison, in Chicago.

Then, after that, during high school I worked after school, and also on Saturdays and during vacations, in a market called Vackout Brothers, at Laramie and Harrison, in Chicago.

Then still later on, on a part time basis, I worked for the National Tea Company.

Q. At the market?

A. Yes, sir, I did.

Q. Now, in 1931, sir, did your father hold any position with the Amalgamated Local 546?

A. Yes, he was the secretary-treasurer.

Q. What was your first position with the Amalgamated Local, and I am going to call it Local No. 546, and I  
13 am referring to your organization, and what was your first position with Local 546?

A. In 1931, that of a clerk, sir.

Q. And as a clerk, what, in general, were your duties?

A. Well, I handled the unemployment compensation problems of the local union that arose, and I did assist bookkeeping work, and I handled the NRA problems that were prevalent at that time.

Q. Did there come a time when your duties changed or were enlarged?

A. Yes, there did.

Q. When was that?

A. In 1935, when I became an assistant business representative.

Q. Was your father still alive at that time?

A. Yes, he was, sir.

Q. Now, as assistant business representative for Local 546, what, in general, were your duties and your activities?

A. My duties were, at that time, to assist the then business representative, Mr. James Laverty, who was in charge of a certain district within the Chicago area. I 14 worked with him and at his direction, and on occasions going in and out of the markets handling the problems of the meat cutters that we represented, their vacations, their complaints, their salaries and the collection of dues, sir.

Q. Did your position thereafter change?

A. Yes, it did, sir.

Q. When did the change commence?

A. The change took place in 1936.

Q. And what was that change?

A. I became a full business representative at that time.

Q. And, as such, what were your duties?

A. They were identical, except that I was assigned to a district of my own.

Q. And doing it on your own responsibility?

A. That is right, sir.

Q. And as full business representative, who did you report to?

A. I reported to the then secretary, Mr. James Laverty.

Q. Now, did you have a still further promotion?

A. Yes, sir, I did.

Q. When did that occur, Mr. Kelly?

A. This occurred in July of 1940.

15 Q. What was the nature of that promotion?

A. Upon the death of Mr. Lavery, I was appointed active secretary of the Local Union, and that was to fill out his unexpired term.

16 Q. Now, in the operation of Local 546, what functions have you performed as—you subsequently became regular secretary, did you not?

A. Yes, I did.

Q. Now, would you briefly describe what your duties are and what you actually do as such secretary?

A. I am in charge of all the correspondence matters of the organization.

I am in charge of the handling of all of the funds of the organization, receipts and disbursements.

I am in charge of handling the contract negotiations for the Local Union.

Q. And do all the business representatives report to you?

A. Yes, sir; they do.

Q. You, rather than the president, are the active executive head of the Local, are you not?

17 A. I would be inclined to say yes, sir, to that.

Q. Now, do you hold any other positions with Amalgamated besides secretary of Local 546?

A. Yes, I do.

Q. What is that?

A. I am an international vice-president.

Q. When did you become an international vice-president?

A. In 1941.

Q. Now, as an international vice-president in general, what are your duties and functions?

A. I am in charge of what is commonly known in our

organization as District No. 10 of the Amalgamated Meat Cutters Union. The Chicago area is known as District No. 10.

Q. Now, by "the Chicago area" would you just be a little more definite and explain to the Court what "the Chicago area" embraces?

A. The Chicago area embraces all of the geographical area from Waukegan on the north over as far as Rockford, Illinois, down as far downstate as Decatur, Illinois, and over to the Indiana border, the Indiana State line.

18 Q. It is roughly the northeast quarter of Illinois?

A. Yes, so to speak, but still it extends down south considerably, down as far as Decatur.

Q. And up to the Wisconsin line?

A. Yes, sir, I would say so.

Q. Now, would you please state for the Court the various fields in which Amalgamated, nation-wide, has members? What I am getting at, Mr. Kelly, to assist you, is we are concerned here with the retail marketing of meat. But Amalgamated has members who are engaged in other work or functions in retail. Would you just briefly describe the nature of the Amalgamated nation-wide or international-wide? What areas or fields of work it covers?

A. Variously speaking, we cover the field of packing, packinghouse work, canneries, retail, poultry plants, fur and leather, tanneries.

Frankly, those are the major jurisdictional parts.

19 Q. Now, if I may, I will ask you to tell about the retail activities, the activity of your Union, and I am talking now of the various locals in Metropolitan Chicago in respect to the retail sale of meat.

We have prepared a chart which may be more or less accurate, I don't know, made as best we could understand from your deposition.

As I understand it, and wherever I state something wrong you correct me, Local 546 of the Amalgamated, of which you are secretary, has a geographic area that extends roughly from the Evanston-Wilmette boundary on the north, out to Wolf Road?

A. Yes, sir.

Q. It then drops down to 79th Street?

A. Yes, sir.

Q. And runs over to the Lake?

A. Not quite, sir.

Q. Not quite.

20 It has approximately 5,000 members?

A. That is correct.

Q. Has had for several years?

A. Yes, sir.

Q. Within the area roughly bounded by Local 546 are two other Locals?

A. That is correct.

Q. One is Local 638, which I have indicated on this chart with an orange color, and that is on the—roughly the west side, and it starts at approximately Roosevelt Road and runs down to 47th Street, and it starts on the east side along about Halsted Street and runs out beyond the City boundaries into the edge of some of the western suburbs?

A. This is correct.

Q. And it has approximately 700 members?

A. That is correct.

Q. Now, your Local 547 is in the southeast portion of Chicago?

A. Yes, sir.

21 Q. It has a rather diffused geographic jurisdiction, it has a hard—the center part of this membership is over near the Lake, but it has shops or locations in



which it represents people, a little on the southwest, some on the Near North, and some up north?

A. This is correct, sir.

22 Q. Are the boundaries drawn here for those three Locals reasonably correct?

A. I would say they are reasonably correct.

Q. We don't purport by the location of these blue dots for Local 546 to indicate the location of any shop, but simply to show there are some scattered around.

Then, immediately south of the southern of 546 at 79th Street commences another Local known as 321.

A. 320, sir.

Q. 320, thank you.

That, apparently, as I understand it, runs out to the southern line of Cook County?

A. That is right.

Q. It runs out to the Indiana line?

A. That is right.

Q. We do not understand, and our chart may not be quite accurate, as to what the boundary is between 320 and 571 on the west or southwest, but 571 starts at the lake and has the section in the lake-Calumet area and in that general area. Am I correct in that?

A. I think you are, sir. I am a little confused on the eastern boundary of 320, myself. I think in essence you are correct.

Q. We want this for illustrative purposes only, and we don't assert that these boundaries are precisely correct. I will ask you if this is reasonably correct, to give the Court a notion of what these various Locals are that we will talk about from time to time?

A. I would say it is reasonably correct.

Q. Local 320 has approximately 650 members, Local 571 approximately 240?

A. Correct.

Q. Now to the north commencing at the boundary between Evanston and Wilmette and running west quite a ways is another Local, No. 262?

A. Yes, sir.

Q. It has approximately 450 members?

A. That would be close.

Q. Now we show it on this map, and because this  
24 particular map only goes up to Mundelein, the southern end to Libertyville, but actually goes up as I understand it to Waukegan—

A. Yes, it does.

Q. And it comes over into here to Lake Zurich, Wauconda, somewhere, and whether the boundary stops at the Lake County Line or continues on off, we couldn't tell from your deposition. Could you tell us?

A. Quite frankly I am not absolutely clear on the westernmost limits of that Local Union, either. I know it butts up against Local 189 at some point.

Q. Now Local 189, which is indicated by the green slashings, so far as retail markets are concerned is virtually all the rest of the State of Illinois, is it not?

A. No, I wouldn't say that.

Q. Well, let's divide it into groups.

A. Yes, sir?

Q. Because it covers such a wide area and it runs way downstate somewhere.

A. Yes, sir.

Q. Beyond any point we are immediately concerned with?

25 A. That's right.

Q. And because it faces varying market conditions it is divided into what is called groups?

A. Yes, sir.

Q. Group 1, as we understand it, is immediately to the

west of Local 546 and 320 and it runs out to the DuPage-Kane County dividing line, or thereabouts?

A. I cannot say that, how far west. I know it borders against the Chicago Locals; but how far it goes out from that point, I really don't know.

Q. And it apparently also has some members that are down here in Chicago Heights and the Olympia Fields-Matteson area, down in there?

A. Yes, it does.

Q. Then, as a part of 189 apparently is a Group 1-A, which takes the next outer rim around the metropolitan area, is that correct?

A. That is correct, sir.

26 Q. In the area of 1-A, night sales of meat for years have been permitted, have they not, in such towns as Elgin, St. Charles, Geneva, Aurora?

A. Yes, sir, they have.

Q. And we have indicated that on this chart by these waving blue lines.

Will County is in a separate group, Group 1-A, or whatever it may be, of Local 189, and night sales of meat are permitted there. Isn't that correct?

A. Is not Joliet in Will County, sir?

Q. Yes, sir.

A. That is a separate local union.

Q. And night sales of meat are permitted there?

A. Yes, they are.

Q. Now, you are familiar with conditions in the adjacent Indiana territory?

A. Yes, I am.

Q. And night sales of meat are permitted there?

A. This is correct.

Q. So that when we get through, we find that in the area immediately surrounding the heart of the City of

Chicago, night sales of meat are and for many years  
27 have been forbidden in the territory of 262, 189—group  
or sub-group 1—roughly as delineated upon this chart,  
546, 547, 638, 547, 571, and 320. Isn't that correct?

What we are talking about is the hours for the vending  
of meats in the territory in which 262, 189, Group 1, 546,  
547, 638, 571, and 321 exert jurisdiction over the members.

Mr. \_\_\_\_\_: You mean 320, Mr. Christensen?

Mr. Christensen: 320. I misspoke. Thank you.

The Witness: What is your final question?

By Mr. Christensen:

Q. I say, that in the area in which those locals have  
jurisdiction over meat cutters—

A. Yes, sir.

Q. (Continuing)—night sales of meat are forbidden.

A. Well, the usual—the word “forbidden.” But by  
mutual agreement with the employers, there is no night  
sale of meat in that area.

28 Q. The mutual agreement forbids the night sale of  
meat, does it not?

A. Yes.

Q. And outside of that area the night sale of meat is  
permitted?

A. That is correct, sir.

Mr. Christensen: I will ask the reporter if she would  
mark this Plaintiff's Exhibit 1 (indicating), and I will  
offer it in evidence.

Mr. Dunau: No objection to its being received.

The Court: It may be marked and received in evidence.

(Said chart, so offered and received in evidence, was  
marked PLAINTIFF'S EXHIBIT 1.)

29 By Mr. Christensen:

Q. Now, Mr. Kelly, as a background, at least since  
the year 1950, in dealing with the major employers of

butchers, Locals 262, 189, 546, 547, 638, 571 and 320, have bargained as a group, have they not?

A. Yes, sir, they have.

30 Q. And the spokesman for that group has been none other than R. Emmett Kelly?

A. That is correct, sir.

Q. At some time prior thereto, and I am not quite sure of the date, the Amalgamated Local representing butchers in the Northern Indiana area, Lake County, and stretching over here (indicating) toward the eastern limit of Indiana also sat with you and bargained with you, did they not?

A. Yes, they did.

Q. And there came a time in which you refused to let them participate in your bargaining, is that not correct?

A. Are you speaking to me individually there? Or as a group?

Q. I am speaking of you individually.

A. No, sir, I didn't do that individually, sir.

Q. Well, how was it done?

A. Well, the combination of Local Unions that sat as a bargaining group together voted to eliminate that particular Local Union.

Q. And you recommended that they vote that way,  
31 did you not, Mr. Kelly?

A. I don't believe I recommended that, sir. I think it was a foregone conclusion that that would be the thing.

Q. Did you recommend it or didn't you?

A. Not to my knowledge, I did not.

Q. How did you personally vote?

A. I voted for their elimination.

Q. And do wish Judge LaBuy to believe that as the bargaining chairman of this group you made no recommendation to all of these Locals as to what they should do about their sister Local out here in Indiana?

A. Yes, sir, I do want Judge LaBuy—



Q. You want him to believe that?

A. Yes, sir, I certainly do.

Q. That you voiced no opinion?

A. I voiced my own personal opinion, but not as a recommendation to eliminate that Local Union.

Q. What was your personal opinion?

A. That in my personal opinion they should not be a part of the bargaining group.

Q. And you voiced that to the representatives of  
32 all these other Locals?

A. Yes, of course.

Q. Now, in the area, and if you don't mind, just to shorten the record, I am going to refer to this as 262, 189, Group 1, 546, 547, 638, 547, 571, and 320, as your bargaining group or your group of Locals, just to avoid repeating those numbers.

Does your group of Locals within the territory they embrace have as members virtually all of the qualified Meat Cutters in that area save and except men who may run and own their own shops and are owner-operators and cut their own meat?

A. Yes, sir, they do.

33 Q. There is no reasonable or substantial supply of butchers for an operator in the area of your group, save through the membership of your Union, isn't that correct?

A. Of the group of local Unions? Yes, sir, you are right.

Q. Mr. Kelly, I hand you a 2-sheet document marked Plaintiff's Exhibit 2 for identification, and will ask you if that is a letter sent out by you over your facsimile signature to the membership of 547, on or about February 2, 1954, disregarding the scratchings and notations that have been made on it.

A. Yes, sir, it is.

Q. You now have the document before you. Will you be kind enough, Mr. Kelly, to refer to your opening sentence, reading: "Recent newspaper articles being prepared by the heavy chain store advertisers indicate a campaign to bring about night meat sales."

Did you intend your members to understand by that that heavy chain store advertisers were writing and preparing newspaper articles which they had inserted in the Chicago press?

A. That the chain stores themselves were doing this, you mean?

Q. Well, your sentence reads—

A. Yes, sir.

Q. (Continuing):

"Recent newspaper articles being prepared by the heavy chain store advertisers."

Now, as I read that, you are saying that heavy chain store advertisers were preparing newspaper articles, news articles. That is what it says, doesn't it?

A. Yes, it does.

Q. Now, what heavy chain store, heavy chain store advertisers, did you know at that time that had prepared any newspaper article?

A. I don't know if there was any particular chain store that was being named in this general sense.

35 Q. Please answer my question, Mr. Kelly.

A. I didn't know any particular chain store.

Q. Did you know any chain stores at all that had prepared any newspaper articles?

A. We had received information in the office that the chain stores were behind articles that were being read in the newspapers.

Q. Mr. Kelly, that is not what you told your membership. You told your membership that articles were being prepared by the heavy chain stores.

We have just agreed upon that, and I want to know what articles by what heavy chain store advertiser you had in mind when you passed this information out to your membership.

A. I cannot recall that, sir.

Q. Did you ever know of any chain store advertiser in Chicago that wrote a newspaper article and got it published in any Chicago newspapers?

A. Not directly, sir.

Q. So you then told your members on February 2, 1954, something pertaining to the night meat sales matter on which you had no information whatsoever; isn't that correct?

A. I don't recollect, sir. If we had information it wouldn't have been written.

Q. Is the Jewel Tea Company a heavy chain advertiser?

A. I would say so.

Q. Would you understand that the average member of your Union would understand that maybe Jewel was one of these people who were inveighing against when you were talking about what the heavy chain store advertisers were doing?

A. There could be an inference there, sir.

Q. There would be in any intelligent member, would there not?

A. I don't know that, sir.

Q. You don't know that? Well, there would be—any ignorant member couldn't get that inference?

A. Possibly.

Q. Now, you go on to say:

"A few very greedy chain stores in Chicago and suburbs, who only want to squeeze the small operator to death, are now screaming that in the interest of

Mrs. Housewife, they must keep their markets open at night."

Do I read you correctly?

38 A. Yes, sir.

Q. Now, in that paragraph you were eliminating most of the chain operators in Chicago, were you not? You were just talking about a very few of them, isn't that correct?

A. There are only a very few chain operators in Chicago, Mr. Christensen.

Q. And there were, of course, even fewer who operated in Chicago and in the suburbs, isn't that correct?

A. No, the same amount of chains in Chicago, sir, were in the suburbs, as well.

Q. In 1954, weren't there but a handful of chains who operated both in Chicago and in the suburbs?

A. No, sir, there were as many then as there are now.

Q. There were as many then as there are now?

A. Yes.

Q. You made a choice when you wrote this paragraph, Mr. Kelly, and would you please name the very few greedy chain store operators you had in mind when you wrote that paragraph?

A. I cannot recollect now, sir. To select any one, two, three or four chain stores from this wordage, dating  
39 back to 1954, I just cannot remember it.

Q. You cannot remember who was agitating for night operations in 1954?

A. Yes, I think there was at least two.

Q. And who were they?

A. I believe National Tea was one, and I think Jewel Tea was the other.

Q. All right, now, you were not at this place inveighing against all chain operators, but just probably those two that you have just named, isn't that correct?

A. This is possible, sir.

Q. It is probable, isn't it?

A. It is probable, yes.

Q. You go on to say that "the interest of these major chains is not in the public and never was", sir. Now, what information did you have before you at that time that Jewel Food Stores was not interested in the public?

A. Well, I feel they were interested in the public up to a point.

Q. This is not what you told your members. You told them that the interest of these major chains is not  
40 in the public and never was. That is a flat statement that you made, sir.

A. And then I said that their interest is not and never was—

Q. (Interposing.) Will you please just answer my question? That is not what you told your members, is it?

A. This is what—that is what the wordage says, sir.

Q. The fact is you now concede that Jewel always has been interested in the public up to a point, is that not correct?

A. That is right, sir, yes.

Q. You go on to say "It is a matter of official record that in an employer-labor negotiating meeting of some three years ago, the representative of Jewel Foods, who was  
41 the secretary of the company, stated 'The reason we want night opening on Friday night is to get first whack at the pay check before the buyer can find other places to spend it'", is that not correct?

A. Yes, sir, I did.

Q. And that was a true statement, was it?

A. That was an absolute statement, sir, one that is very true.



Q. Can you object to that statement made by the representative of Jewel, sir, that the food purveyor ought to get first whack at the pay check?

A. I did not say that in this.

Q. Please, just answer my question.

A. No.

Q. You do not object to that, do you?

A. No.

42 Q. That is a pretty good idea, isn't it?

A. That is correct, sir, and I did not say that.

Q. All right, you next say "True American ideals call for a free enterprise system wherein our members should have rightful opportunity of some day owning their own business", and by that I take it that you mean that a working butcher, paid for wages, assuming he was a good butcher, got good wages, saved his money, might some day accumulate enough to make a down payment on a butcher shop and open his own store?

A. That is right, sir.

Q. That is what you had in mind, isn't it?

A. Yes, sir.

Q. And it was your idea that the business world should be so regulated that your members could have the opportunity readily of progressing from the employee class into the owner class?

A. I had hoped so, sir.

Q. I did not hear you.

A. I had hoped so, sir.

Q. That is what you had in mind at that time?

A. That is correct.

Q. And you wanted to protect that believed right  
43 or that philosophy of yours, and I am not quarreling with it, by restricting the hours for the sale of meat?

A. No, sir, I have not said that.

Q. But you thought that all the chains were doing by

pressing for a night sale of meat—the whole purpose of that letter is to argue against the night sale of meat, is it not?

A. I would say yes, sir.

Q. And you were endeavoring to persuade your five thousand members that the night sale of meat might somehow interfere with the possibility that some day they could move out of being employees into being market owners?

A. Yes, sir.

Q. Your next sentence says—or the next sentence—the second next sentence says “Reliable information at hand proves that at least three of the four major chains have joined hands in a concerted plan to turn the buying public against the meat cutters union.”

Would you please name the three major chains that you had this reliable information on as you claim?

44 A. Yes, sir, if I remember correctly, that was the A&P, National Tea and Jewel.

Q. And who was the other major chain—fourth one?

A. Kroger.

Q. Now, what was this concerted plan of those three people that you had in mind that was designed to turn the buying public against the Meat Cutters Union?

A. It was felt by the organization at that time that those three operators were responsible for some of the articles that were appearing in the newspapers.

Q. So that instead of having reliable information, you had a feeling by your organization, is that not correct, Mr. Kelly?

A. I think it went farther than that, Mr. Christensen.

Q. All right, and what was this reliable information that you had that those three chains were trying to damn you in the eyes of the public of your organization?

A. I do not recollect that at this time, sir.

Q. Did you have anything?

45 A. We would not have written the letter, if we didn't, sir.

Q. All right, and what was that information—where is that information today, rather?

46 A. I do not know, sir.

Q. You are the custodian of every record and scrap of paper that your union has around, isn't that correct?

A. That could have been oral information.

Q. Who did you get the oral information from if you would have gotten any?

A. I do not recollect that now, sir.

Q. You are unable today to make any oath to one scrap of reliable information that any of these major chains were trying to turn the buying public against your union, is that not correct?

47 A. I have no such information.

Q. And as of this moment you have no recollection of what it was that you had in mind or claim to have had in mind when you wrote that sentence, isn't that correct?

A. All I remember is that we had oral information, Mr. Christensen. What the information itself was, I do not recollect.

Q. Or where you got it, nor what the information was, is that correct?

A. No, sir, I do not remember that.

Q. And with as long experience as a union organizer, starting out under the tutelage of your father, you know a sentence like that would infuriate your membership against these three of the four major chains, would it not?

A. I wouldn't think so, sir.

Q. They would like to know that Jewel was trying to turn the public against their union?

A. If it were true, sir, I think they would like to know that.

Q. And you expected them to believe that it was true?

48 A. That is correct.

Q. And they would not like that information, would they? They didn't like that information, did they?

A. Yes, a good many of our members liked that information, Mr. Christensen.

Q. Well, they would not like to know that Jewel was doing that, would they? They would not like Jewel's activities of doing that, would they?

A. If it were so I would presume they would not like it, sir.

Q. They would be angry at their employer for trying to turn the public against their union, wouldn't they?

A. I don't know that they would be angry.

Q. You don't know?

A. No.

Q. Was it your intention in writing this letter to make them happy with Jewel and thinking that Jewel was a fine organization?

49 A. No, just merely to state the facts that we considered we had at hand at that time.

Q. It was not your intention to make them happy? Was it your intention to make them displeased, then, with their employer?

A. No, sir.

Q. Just to pass on information?

A. That is correct, sir.

Q. You had no notion in your mind as to how they would react to it?

A. No, sir, it is very hard to gauge. As I say, that is very hard to gauge.

Q. At that time you had no notion as to how they would react to that sentence?

A. I never have, sir.

Q. Do you wish this Court to believe that your members have kept you in office to these many years and you have no notion as to how the average butcher reacts to trade information?

A. No, they are a very hard group of people to—

Q. (Interposing.) And is that what you wish this Court to believe?

50 A. What is that question again?

Mr. Christensen: Would you read the question?

(Question read.)

A. That is right, sir; I do not.

Q. Now, in your next paragraph, as you are looking at it, Mr. Witness, reads: "Don't be misled into changing your minds by any picture that supervisors might paint regarding additional money you might earn. Mr. E. E. Hargrave, a vice president of Jewel Foods, has already said that. 'Self-service meats would only require the services of one meat cutter between 6:00 and 9:00 p.m.'"

I take it that the quotation ends there, although it is not indicated upon the document, and then the writer, or as the writer, you go on to say, "So you who work on all day long do not have enough to do should cut additional meat to be sold at night without you gaining financially in any way."

Did Mr. Hargrave make that statement, or the state-  
51 ment, rather, which you attribute to him there?

A. If I quoted Mr. Hargrave, I am sure he made the statement, sir.

52 Q. That is your best recollection?

A. Yes, sir, it is.

Q. So that prior to this time, the 2nd of February, 1954, Hargrave had made you a proposition as one of the



representatives of these butchers that they were pressing to have these men stay away at night from their families, that they would in the self-service system and only need one meat cutter between the hours of 6 and 9 P.M., isn't that right?

A. I would say so, sir. Yes, sir.

Q. Now, is it true that your members at that time actually did not have enough to do?

A. No, sir. They had plenty to do.

Q. So the statement that you made to them here was an error, wasn't it?

A. No, sir, it was not an error.

Q. Well, as I read it, you say:

"So you who work all day long and don't have enough to do should cut additional meat."

That's what you told them, isn't it?

A. I believe it was with sarcasm that statement was made, sir.

53 Q. Of course, Mr. Kelly, you are without information as to how the average butcher thinks. You have just told Judge La Buy that. How did you think the reader of this letter was to think your words did not mean what they say, that you were using sarcasm?

A. I think the reader of this letter knows pretty well the tone that I use in my letters, sir.

Q. Well, in your negotiations—you talked this matter over with Mr. Hargrave, apparently, before you wrote this, isn't that right?

A. Yes, sir, I would think so.

Q. There isn't any doubt about it, is there?

A. If I quoted Mr. Hargrave I certainly talked it over with him, sir.

Q. Now the answer to my question is there was not any doubt about it, and isn't the simple answer to that question, "Yes"?

A. Yes.

Q. All right. Had Hargrave ever, at any time, prior to this date, told you that he wanted your butchers to cut more pounds or more tonnage of meat per eight hour day?

54 A. He never told me that, no, sir.

Q. And he had never complained to you about the general productivity of your members, had he?

A. No, sir.

Q. It's been a long practice with Jewel when market volume or volume of work increases to increase market personnel proportionally, give or take a little bit? It is a matter of judgment, I understand. You cannot measure these things precisely.

Hasn't that been the practice?

A. No, sir, it hasn't.

Q. It has not?

A. No, sir.

Q. You have never in the last six, seven, eight contract negotiations, presented an issue or demand by your Union to increase the personnel in any market, have you?

A. No, sir, not to increase personnel.

Q. You go on to say, if you will refer to your letter, Mr. Kelly:

55 "Reporters from newspapers handling chainstore advertising have discarded and misquoted statements from your Union, so as to make the employer look good and your Union bad."

I read you correctly, sir, do I not?

A. Yes, you do.

Q. I take it you were pretty angry when you wrote that sentence?

A. No, sir, I wasn't angry.

56 Q. You were not angry?

A. No, sir.

Q. That you had been misquoted and the organization you are paid to represent had been made to look bad in the newspapers?

A. No. I wasn't a bit angry, sir.

Q. You were not angry about it?

A. No, sir.

Q. What does it take to make you angry, Mr. Kelly?

A. More than that, sir.

Q. You thought, nevertheless this was something that your members ought to be informed of?

A. Yes, I certainly did.

Q. And you were upset enough about it to try to straighten them out?

A. This is correct.

Q. But you were not angry about it?

A. No, sir.

Q. Now, what statement by either you, Emmett  
57 Kelly, or anybody else, had been misquoted by any reporter, by any newspaper handling chain store advertising?

A. I cannot pin down the name of the individual at this time, sir. I remember distinctly that there was a series of articles going back and forth in the newspapers at that time—

Q. Mr. Kelly, please, I didn't ask you the name of any individual.

A. I can't remember the statement, sir.

Q. You go on to say:

"They will not print the picture, because they want the millions of dollars they profit from that advertising."

Who do you refer to by "they"?

A. The newspaper, sir.

Q. What newspaper?

58 A. The newspapers who apparently were writing these articles.

Q. Which newspaper?

A. Well, the Tribune, for one, was doing this, sir.

Q. The Tribune was refusing to print the truth because it wanted a lot of advertising, is that what that sentence says, then?

A. That's what the sentence says, sir.

Q. Any other newspaper?

A. I can't recollect that, sir.

Q. So we are not talking about "they", but we are talking about:

"The Chicago Tribune will not print the truth, because they want the millions of dollars they profit from chain store advertising"?

A. There could be trade store publications.

Q. Were there?

A. It's possible; yes, sir.

Q. Which ones were they?

59 A. If I remember, it was The Supermart News.

Q. The Supermart News. Anybody else?

A. No, I can't remember anybody else, sir.

Q. (Reading):

"If the chains really want to lower the cost of meat," as they say, and I am quoting your language:

"... why don't they shut off some of this foolish advertising which nobody reads, and show it in a decrease in the price of meat."

Do I quote you correctly?

A. You certainly do, sir.

Q. Did you believe that statement when you wrote it?

A. 100 per cent, sir.

Q. Do you believe that nobody reads the chain store advertisements?

A. Some people possibly, sir.

Q. Then you did not believe what you wrote, did you? You lied to your members?

Mr. Dunau: Objection, your Honor.

The Court: Sustained.

60 By Mr. Christensen:

Q. You misrepresented to your members your own belief?

Mr. Dunau: Objection, your Honor.

The Court: Overruled.

A. I don't think so, sir.

Q. Mr. Kelly, you state in here to your members that: "Nobody reads chain store advertising."

That is your plain verbiage by a man who has had three years at Notre Dame University, isn't that right?

A. Yes, that is correct.

61 Q. And you didn't believe that statement when you wrote it, did you?

A. Yes, I believed it or I wouldn't have written it, sir.

Q. You believe that nobody read chain-store advertising?

A. Yes, I did, sir.

Q. And you think the advertising that the chain stores do is foolish?

A. I think so.

Q. Now you go on to say:

"This is not the gaslight era, nor is it the days of the steam calliope when this Union thirty or forty years ago went around to the markets and closed them down at decent hours."

You were not a Union official in the gaslight era, were you, Mr. Kelly?



A. No, sir, I was not.

Q. But as a boy you at least worked in a market in the tail-end of what we might call the gaslight era?

A. I was one of those who went around to the  
62 markets as a boy to help close them down, sir.

Q. How did you close them down?

A. We used to meet with my father and other officials of the Union on Sundays and at nights after 6 o'clock and go from market to market.

Q. And what would you do?

A. Well, I suppose I was used as a decoy.

Mr. Christensen: I would be the one who would make the purchase of meat in order to determine if the shop was open.

Q. You went in pretending to be a bonafide customer?

A. Correct, sir.

Q. To see if the market operator—

A. If he was working for the Union.

Q. You deceived the market operator?

A. I don't know, sir. I was only a boy.

Q. Do you understand what a decoy is?

A. At this point I do.

Q. How old a boy were you?

A. Ten, twelve, thirteen.

Q. I assume you have had some religious training?

63 A. Considerable, sir.

Q. Well by ten I assume with your religious training you had been through the Ten Commandments?

A. I would think so, sir.

Q. And you had not learned at ten what "deception" was?

A. I had learned to honor my father and mother. I was honoring my father, sir.

Q. And willing to bear false witness and come in under false colors in order to honor your father, is that correct?

Mr. Dunau: Objection, your Honor.

The Court: Sustain the objection.

By Mr. Christensen:

Q. Now, Mr. Kelly, at that time the average market dispenser of meat in the Chicago area was owned by a family or two or three partners, was it not?

A. I would think pretty much so, sir, yes.

Q. And he would have one, two, three paid, butchers working for him?

A. He could, sir.

64 Q. Does that describe the size of an average operation?

A. The average operation would be like that, yes.

Q. Now tell the Judge how they kept the meat from spoiling in those days?

They had an ice box, didn't they?

A. Yes, sir.

Q. Where was the ice box located?

A. Within the store, sir.

Q. In the back of the store?

A. As a rule.

Q. And they could not keep the meat out very long or it would spoil? They took out just enough to cut from at the time and would have to be running back and forth from this man-sized ice box that a man could walk into?

A. Yes and no. It depended on the type of merchandise. Smoked items, they kept out.

Q. I am talking about fresh items?

A. Fresh items in the main were kept in the refrigerator.

Q. That refrigerator was an ice box?

A. Yes, sir.

65 Q. And the light in the average store was a gas jet, was it not?

A. I believe you are preceding my memory a little bit. I have heard it was, yes.

Q. Well, Mr. Kelly, I don't know how good your memory is. It has been rather amazing to me this morning. You are talking about the gaslight era.

A. I remember the gaslights on the street, sir, but not in the house.

Q. So that when you are talking about the gaslight era in here you are not talking about gas lights in butcher shops?

A. I don't remember them that way, sir.

66 Q. Mr. Witness, in the gaslight era that you are talking about of meat markets, it is a fact, is it not, that by and large markets were not even heated in the wintertime?

A. Yes, sir, I would agree to that.

Q. They would leave the door open to get the benefit of the cold air as an aid to keeping their meat?

A. They did, sir.

Q. And the meat was delivered from the wholesalers or purveyors of it to the individual markets by horse and wagon, was it not?

A. It was.

Q. Unrefrigerated in any way?

A. That's right.

Q. Now, you never had any information, did you, that Jewel wanted to go back in the year 1954 to operating markets under those conditions, did you?

A. The paragraph doesn't have reference to that, Mr. Christensen. Of course I didn't.

Q. All right. In your next to the last paragraph,  
67 you stated:

"It is just too bad we can't get the proper cooperation from the retail clerks, so that we could make this unanimous. It certainly would be easier if we could."

What would have been proper cooperation from the retail clerks?

A. A uniform closing of both sides of the store, sir.

Q. And what were the retail clerks doing in 1954 that was not proper cooperation?

A. They were not cooperating with the meat cutters' Union in having a 6:00 P.M. closing operation.

Q. They were letting stores operate much later so far as their members were concerned; isn't that right?

A. In the Chicago area; yes, sir.

Q. And I notice that you speak in here,

"We can't get the proper cooperation."

Do I read from that that you had tried to get what you thought was cooperation and failed?

A. Yes, for many years, sir.

Q. You had gone to them and importuned them to  
68 insist that their people stop work at six o'clock; is that correct?

A. We had met with them on the subject of cooperating together on the closing at 6:00 P.M., sir, yes, we did.

Q. And asked them to see that the grocery department of the stores refused to sell groceries after six o'clock, isn't that right?

A. Yes, that we did.

Q. You conclude:

"With your solid support and cooperation Chicago and suburbs will always close every night of the week at the Union closing hour of 6:00 P.M."

Did you mean that when you wrote it?

A. Yes, sir.

Q. Do you mean it now?

A. Yes, sir.

Q. You have never varied from that in your view or in your exercise of leadership in the Union, have you?

A. In my individual view? I have not.

69 Mr. Christensen: Please repeat the question.  
(Question read.)

By the Witness:

A. I have not.

By Mr. Christensen:

Q. You meant it then and you mean it now?

A. Yes, sir.

Q. That meat markets will always close every night of the week in this area at 6:00 P.M.?

A. With the solid support and cooperation of the membership, yes.

Q. Yes, you need that, of course, to implement it?

A. Yes, of course.

Mr. Christensen: Now, if I may have the letter. Mr. Kelly, I will offer Plaintiff's Exhibit 2 for identification, into evidence.

70 Mr. Dunau: No objection to its receipt in evidence.  
The Court: It is received.

(Said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT 2.)

72 By Mr. Christensen:

Q. Mr. Kelly, I show you a placard or a sign, which has been marked Plaintiff's Exhibit No. 3, reading "Pursuant to agreement with Amalgamated Meat Cutters, market closed after 6:00 p.m.", is that correct?

A. Yes, sir.

Q. Do you recognize that as a sign or placard that was displayed in Jewel stores in this area after discussions with you as to a proper sign display, sir, announcing to the  
73 public that they could not get meat after 6:00 p.m.?

A. Yes, sir, I do.



Q. And prior to this sign, sir, had there been another sign posted there?

A. Yes, there had.

Q. Did you object to the other sign or signs?

A. To the wordage on the sign, yes.

Q. Why did you object to them?

A. Because, as I remember, in the other sign it—the entire onus was placed upon the union, whereas actually it was an agreement between both parties that the market would be closed.

Q. You wanted the sign to say “Pursuant to an industry-union agreement this market” was being closed?

A. Or words to that effect, yes, sir.

Q. And this sign, in your humble judgment, stated the truth in 1954, 1955 and 1956, and even today?

A. That is correct, sir.

Mr. Christensen: I will offer the document into evidence.

Mr. Dunau: No objection, your Honor.

The Court: Received.

74 (Said document so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT 3.)

By Mr. Christensen:

Q. I think it will help you, Mr. Kelly, if you will just keep those minutes in your hand.

Did you attend a membership meeting of Local 546 on October 16, 1955?

A. Yes, sir, I did.

Q. Was the purpose of that meeting to have the members pass upon a contract that had been worked out between the industry generally and your affiliated group of locals?

A. Yes, it was.

Q. And all of those affiliated locals that we talked about

earlier this morning, either on that day or at a meeting like this, held a similar meeting to pass upon an identical contract except as it may have changed the geographical jurisdiction and the name of the particular local, is that not correct?

A. That is right.

Q. Who is Mr. Thomas Gorman? Who was Mr. Thomas Gorman at that time?

75 A. He was and is president of Local 546.

Q. Did he address the meeting?

A. Yes, he did, sir.

Q. Did he point out that Local 546 is tops in the meat cutting craft, with the best contract in the United States, and it will continue to enjoy the best contract?

A. Yes, sir, he did.

Q. Did he tell the members that locals throughout the country have besieged the officials of 546 to give them copies of your 546 contract?

A. Yes, he did, sir.

Q. To use as a model for the country so they could try and do likewise?

A. I presume so, yes, sir.

Q. And after they looked them over, did he tell the members that after the various officials throughout the country looked them over—did he tell the members that after the various officials throughout the country looked them over that they said that “Emmett Kelly has the key to the store”?

A. I believe he did say that, yes.

Q. Did he also tell them that there was one local missing from the meeting today and from the group, and  
76. that it was because of irresponsible leadership of that organization?

A. Yes, he did, sir.

Q. Did he tell the members that if there is any viola-

tion by any of them of the contract and they are brought before the executive board, to be aware of your executive board because it is a merciless group?

A. If they were at fault. You did not include that statement, Mr. Christensen.

Q. Well, he told them what I said, didn't he?

A. Yes, in part, he did.

Q. And he said "If you are at fault"?

A. Yes, sir.

Q. And then did you get up and tell them what the fault had been that resulted in one local no longer being a member of your group?

A. I did, sir.

Q. And you told your members and these other affiliated locals that, did you not, that were there at that time—they were there at that time, weren't they?

A. The other—I beg your pardon, but I did not  
77 hear you.

Q. At this particular meeting, didn't you have the other affiliated locals there with you?

A. Not to my knowledge, sir.

Q. Well, apparently you had a representative of No. 55, 571, 320, and 612, and I assumed that—

A. (Interposing.) Yes, they were there, that is right.

Q. I assumed that their members were there also.

A. No, they were not.

Q. They were not?

A. No, they were not, just their officials.

Q. All right, and did you then tell the membership that Local 350, which covers the Gary-Hammond area, was no longer a member of your negotiating group, and that Local 350 had been asked repeatedly to police their territory for female help and Friday night operations, which is what "we have been fighting against all these years"?

A. Yes, I did, sir.

Q. And you have been fighting against female help in butcher shops for years, have you not?

A. Yes, sir, we have.

78 Q. The other thing was Friday night operations that you had been fighting against, is that not correct? In other words, you had been fighting against that for years?

A. Yes, sir.

Q. And that is what your executive board had been merciless about, is it not, that it was a fault to work Friday nights?

A. No, sir, I did not interpret it that way. I do not interpret it that way.

Q. I see. Well, Mr. Gorman made his statement about your executive board being merciless in connection with the dropping of Local 350 from your bargaining group,  
79 did he not?

A. Coupled with other things, he did, sir.

Q. Then later on, and I refer you to the foot of that long paragraph on page 3, Mr. Kelly, and did you tell the members that Local 350, and that is the Gary-Hammond local, no longer bargained with your group until the leadership is changed, or they consent to follow a pattern set down by the Chicago local unions?

A. Yes, sir, I did.

Q. The fact of the matter is that you voted Local 350 out of your bargaining group because they permitted female help and Friday night operations, isn't that right?

A. You mean the entire group voted 350 out. Yes, we did, sir.

Q. Isn't that correct?

A. Yes.

Q. Now, at that meeting, and I refer you down towards the foot of page 4, were the members told that they would

vote upon the entire contract that was then presented to them, sir, as an entirety?

A. Yes, sir.

80 Q. They were accorded no opportunity at that meeting to vote on it section by section, were they?

You may consult the entire minutes, if you wish.

A. They voted on it as an entirety.

Q. And they had no opportunity of voting on it section by section?

A. No, sir, they did not.

81 Q. At that meeting did you stand up and tell the membership what the employers demands were, including one for that operation?

I refer you down past the middle of page 6, Mr. Kelly?

A. Yes, we did, sir.

Q. And did you tell them that the night operation clause, that some of the operators in any event had suggested, was designed to give the benefit to the operators and take into consideration department store markets and possibly through a round-robin operation:

"We would eventually be open every night in the week."

A. Yes, I did, sir.

Q. That: "Naturally the negotiating committee took a firm stand against"?

A. That's right.

Q. And did you tell them at the tail end that you had in writing, "Somebody would take you to Court in litigation regarding the female classification of night operation"?

A. Yes, I did, sir.

82 Q. And did you tell your members that you had informed the employers' group that personally you never have had and you never will have any intention of



selling out the membership regarding Friday night operations?

A. Well, there is more to that statement, sir.

Q. Yes. Just did you tell them that?

A. Yes, I did, sir.

Q. And that:

"If it is going to be done it will have to be done in Court"?

A. I did, sir.

Q. Have you ever varied from that position at any time?

A. No, sir. I haven't.

Q. And have you used your influence, as Chairman of the Bargaining Committee, to promote that view amongst your co-bargainers and Union brethren?

A. No, sir, I haven't.

Q. You have not?

A. No, sir.

Q. Now turn, if you will, if it will help you, turn to the top of Page 7, Mr. Kelly.

83 A. Yes, sir.

Q. Did you stand up on the rostrum and tell the members that:

"Each year negotiations have been getting tighter, especially sitting as we are here in Chicago just like a sore thumb with no night operation or female classification when it is all around us"?

A. I did, sir.

84 Q. What did you refer to that "Chicago is sitting like a sore thumb with no night operation when it is all around us"?

A. Well, I presume I was pointing out the fact that on the Indiana side and on the Wisconsin side, there was night operation, and out in the country towns—

Q. And out here? (Indicating.)

A. Yes, sir.

Q. All around us?

A. That is right, sir.

Q. Except we have got a blacked-out area, which is roughly Cook and Lake Counties, is that right?

A. If you may call it a blacked-out area, we have, sir.

Q. That's a rather startling thing, and it is observable to everybody, and "it sticks out like a sore thumb," is the way you put it?

A. I did that.

Q. Now further on the page, did you tell the members that you had conceded the right to the employers to  
85 Cry-O-Vac, that Cry-O-Vac wrapped hams off the premises of the stores?

A. I did, sir.

Q. Just for the benefit of us laymen, I take it that Cry-O-Vac is one of these new plastics or cellophane varieties that I don't quite understand?

A. Yes, it is, sir.

Q. You told them that you had given them the right to wrap Cry-O-Vac hams off the premises; that you gave them permission to sell them only up until 6:00 P.M.

Did you state that to your members?

A. Yes, I did.

Q. At the top of the next page, did you tell your members you had given this permission to A&P and, in fairness to competition, you had to give it to all other employers?

A. I did, sir.

Q. And that is the term you used, "permission"?

A. Yes, sir. That is what the minutes reflect.

Q. Well, that is your recollection?

A. Yes.

86 Q. That is the term you used, "permission"?

A. Yes.

Q. The Union was giving permission to the employers as to when they could sell their product?

That is correct, isn't it?

A. Yes, sir. The minutes so state.

87 Q. Mr. Kelly, do you have in your hands, do you, a copy of your Local 546 minutes of a special contract meeting on Sunday, November 24, 1957?

A. I do.

Q. In the 1957 negotiations had Jewel made you a separate offer on its own behalf?

A. Yes, they had, sir.

Q. Did that embody the night sale of meat?

A. Yes, it did.

Q. In self-service stores?

A. In both, I believe, sir.

Q. Well, for the record, and because some of the learned jurists who may pass on this record may not do the family shopping, in a self-service meat market, is it a fact that there are frozen, there are refrigerated, electrically  
88 refrigerated counters in which meat can be displayed without spoiling?

A. Yes, sir, there is.

Q. Basically, those counters are long bins made as attractively as a manufacturer can make them? It has refrigerating equipment on the bottom of the bin and around the sides, but the top is open, because cold air stays down, it stays cool inside this open bin? Isn't that right?

A. That's about right, sir.

Q. And they are at a little above waist height, so that the shopper can walk along and look at the meat that is displayed in this long bin or refrigerator counter?

A. Yes, sir.

Q. And in the self-service system before the meat is placed in the counter it is cut into a cut suitable for retail purchase?

A. That is right.

Q. Wrapped in cellophane or some clear wrapping and a stamp placed on it indicating the variety of the meat, the weight of the particular piece and the price to the  
89 customer?

A. That is right, sir.

Q. So that all the housewife or the shopper has to do is to walk along the counter and she can look at the beef selection or the pork selection or whatever it may be and see if there is a piece in there that is what she wants to buy?

A. Yes.

Q. Then make her selection, put it in her cart or basket that is customarily used in modern markets, and without saying a word to anyone, take it along with whatever other purchases she makes to a so-called checker who looks over what the shopper has, totals up the bill and checks the money?

That is the way meat sales are handled in a so-called—in a self-service market, isn't it?

A. Yes, sir.

Q. And customarily there are working butchers in attendance at the counter or they can be summoned by ringing a bell so that if the shopper does not see the particular cut or the size, if she wants a two-pound steak instead of a three-pound steak she can summon the butcher and in  
90 the back room he will cut a piece tailored for her specifications, if he has it available?

A. That is right, sir.

Q. That system of marketing meat was a physical impossibility in the gaslight era, was it not?

A. Yes, it was, sir.

Q. And it has actually only been adopted and a physical possibility roughly within the last ten years; more or less?

A. That is right, sir.

91 Q. In the modern supermarket and stores, and in all of Jewel stores, I believe you are familiar with all or most of them, you have what is known as a Grocery Department and a Market Department, which is the Meat Department, isn't that right?

A. That's right, sir.

Q. And the Grocery Department, of course, embraces dry groceries, oat meal, flour, spices, everything else, produce—that term refers to green goods, generally, does it not?

A. Yes, it does.

Q. Vegetables, the like of that.

Milk, cheese, and then meats, both fresh and frozen, or smoked or canned or otherwise prepared. That is the general setup of a modern food store, and it is the setup basically of all of the Jewel stores, is it not, with few exceptions?

A. Yes, it is.

Q. And you are familiar, are you not, in a general way, that, with a handful of exceptions, Jewel for several  
92 years has sold all its meats through the self-service system?

A. I am, sir.

Q. At this meeting of November 24, 1957, did you read to your membership a legal opinion to the effect that a restriction by industry union agreement as to the hours in which competition in the sale of meats could be engaged in, in the Metropolitan area of Chicago, was a violation of the Anti-Trust laws?

A. Yes, I did, sir.

Q. And did you tell them that Jewel had presented that opinion to you and told you about it during the negotiations which had taken place during the fall of 1957?

A. Yes, sir, I did.



Q. Did you tell your members that that course of action by Jewel is what you would call negotiating with a  
93 gun in your back? I refer you to about the middle of your Page 9, Mr. Kelly.

A. Yes, I did, sir.

Q. Then did you say to the membership if they want a contract without night operation, "We will take our chances with Court action, and if night operation comes to Chicago, we thank Jewel Tea for it"?

A. I did, sir.

Q. Did you further tell them that as they might have observed from the way you had described the negotiations, that Jewel Tea had had no part of the contract as presented by the employers?

A. I did, sir.

Q. Jewel was standing alone against the industry, isn't that right?

A. I don't know if there is—

Q. What you told the members in substance?

A. No, sir, I didn't.

Q. Well, I assume this is not a verbatim quote of your words, but it says,

"As you have noted up to this point, Jewel Tea has  
94 had no part of the contract as presented by the employers."

Now, I don't want to put any words in your mouth at all, but I take it that you are telling the members that Jewel Tea was standing over here and the rest of the industry was taking some other position, and Jewel alone was insisting upon this night operation and was threatening you with Court action?

A. Yes, sir, I told them that.

Q. That was substantially the fact, as the way things stood as of November 24, 1957?

A. That is right.

95 Q. So that it is at that point there had been an agreement as to the terms of the general contract between your negotiating committee, tentative agreement subject to ratification, and the industry, except Jewel?

A. Yes, sir.

Q. Turn, if you will, to your Page 15. As I understand it, at this meeting of November 24, 1957, you are still narrating as accurately as you can, do you remember, what had gone on in the '57 negotiations, and you are describing where you stand, and you said that an offer had been made in which you had made concessions and the employers' group generally had made concessions,  
96 and to find out where you stood in those negotiations some days before this meeting, you asked that a poll be taken by the employers who were bargaining with you to determine their acceptance of the final Union demand and your final Union demand excluded night operations, isn't that right?

A. This is right, sir.

Q. And the results were as follows: Associated Food Dealers, yes, they would take the Union proposal?

I am getting my information from Page 15, Mr. Kelly.

A. I understand. I have it here.

Q. Del Farm Foods. That is another chain, isn't it?

A. Yes, sir.

Q. Operating several stores?

A. Yes, sir.

Q. They said, yes.

National Tea Company. That is a major chain operating a good many stores?

A. Yes, sir.

97 Q. A conditional yes?

A. This is where I wanted to change my thinking from the previous statement and where the confusion came

in to my mind, because earlier you said Jewel had stood alone. Actually, National Tea and Jewel were standing together at that point—

Q. Yes?

A. (Continuing.) —and that is why this shows as a conditional yes.

Q. All right. There was a difference, however, between National Tea and Jewel, was there not?

A. In what respect, sir?

Q. Well, just let me complete this, and I think you will agree with me, Mr. Kelly.

A & P Tea Company, they are a tremendous large operator, aren't they, A & P?

A. Fair-sized, in this market, sir.

Q. They said yes?

A. Yes, they did.

Q. Kroger Company, yes.

A. Yes.

Q. Table Right. That is Illinois Grocers Associa-  
98 tion. They said yes.

A. Yes, they did.

Q. Goldblatts. That is a department store, with some outlying outlets. They said yes.

A. Yes.

Q. Hillman's, they said yes.

A. Yes.

Q. Save-Sure. That is another—

A. Sure-Save.

Q. Sure-Save. Thank you. They said yes.

A. Yes, sir.

Q. High-Low. That is another chain store operator. They said yes.

A. That's right.

Q. Wieboldt's. They said if Jewel is the only one opposed they voted yes. They will go along with the herd, that is right, sir?

A. That's right. Otherwise, no.

Q. Otherwise, no?

A. That's right, sir.

Q. And then you told your members, and I assume you were telling them the truth:

99 "Jewel offered a flat no to the contract that eighty-five percent of the industry had accepted."

A. I did. I said that.

Q. And that was a—I am not asking you to hold precisely to the eighty-five per cent, but that was a substantially accurate statement, to the best of your knowledge?

A. I would say a very fair statement, yes, sir.

Q. Then did you tell your members that on the Friday afternoon before this Sunday meeting that Ed Vorbeck of the Jewel Tea Company had appeared at the Union office covering their company alone?

A. I did, sir.

Q. You said that was unethical?

A. Yes, sir, I said that.

Q. But nevertheless it was their privilege?

A. I did, sir.

Q. Well, Mr. Kelly, I have difficulty in how one may have an unethical privilege. I don't quite understand what you were trying to say there.

100 A. I didn't say an unethical privilege, sir.

Q. You say it is their privilege?

A. That is right, I did.

Q. But it was unethical?

A. That is correct. I said that.

101 Q. Now, I just don't understand the unethical privilege. What were you attempting to convey in that statement?

A. I was attempting to point out that it had been a part of the industry group throughout the entire negotia-

tions—the majority of the industry—that they had seen fit to accept the union contract proposal, and in view of that it was our view that Jewel should not be in any different position. That was the position of all of the contract negotiators.

Q. And that is all that the union and the industry would conform on the pattern as to hours of competition?

A. Once the agreement was reached between the majority, yes, sir, that is correct.

Q. And that would govern the hours of competition in the sale of meat in Chicago?

A. That is correct, sir.

Q. That was your understanding all the way—that was your understanding of the way those negotiations had gone, that was your understanding of the situation between the parties and that was your understanding that you 102 honestly tried to convey to the members that night?

A. I did, sir.

Q. Now, turn, Mr. Kelly, if you will be so good, to page 22.

A. Yes, sir.

Q. Did you tell the members, and was it a substantially accurate narration of the fact that as a result of the negotiations that had gone on, just concluded just a few days before this meeting of your membership, that there were three propositions for the members, and they should pass on—that there were three propositions for the members to pass upon, and the first one is the majority of the industry offer with no female help and no night operations, and an increase of eight dollars or five dollars for two years in self-serving markets; \$9.50 and \$6.00 in—

A. (Interposing.) I did, sir.

Q. And the second proposition was a proposal by Jewel, the plaintiff here, and National Tea, that the same wage scale with night operations, and with five dollars addi-



tional for head meat cutters and journeymen, wherever  
103 females were employed?

A. Yes, I did, sir.

Q. And then an alternate Jewel offer with the same wage scale, and five dollars additional for head meat cutters and journeymen and no apprentice help, females where employed in the same market, that that offer would not include National Tea?

A. That is correct, sir.

Q. Did you then tell the membership that the negotiating committee consisted of representatives of all of these negotiating groups of the locals?

A. That is right, sir.

Q. And that they recommended the majority of the industry offer?

A. I did, sir.

Q. Without night operations or female help, and you suggested they vote favorably on it?

A. That I did.

Q. Did they do so?

A. They did.

Q. Did they substantially vote down both of Jewel's propositions?

A. Yes, they did.

104 Q. Did you recommend they do so?

A. I did that, sir.

Q. Did you take a strike vote?

A. Yes, we did.

Q. And that was to strike who?

A. Jewel, and National Tea, in the event they did not become a part of the industry contract.

Q. Did you tell the members that you wanted them to vote—that you did not anticipate a strike, but that it would strengthen the hand of your negotiating committee?

A. I did.

Q. And pursuant to that, sir, was the vote, at the foot of page 24, 2,253 in favor of a strike against Jewel and National Tea, 98 against the strike, and 7 blank ballots?

A. I do not show that in the minutes that I have before me, sir, but I am quite positive that is true.

Q. At the foot of page 24, away down there at the bottom of page 24?

A. Yes, that is the correct outcome of the balloting.

105 Q. Now, considering a strike against Jewel alone for the minute, do you have employees so far as—or do you have members or did you have members in every Jewel store in the metropolitan area?

A. Yes, we do, sir. When I say that, I mean the combination of the locals do.

Q. Yes.

A. Yes, sir.

Q. Do you know whether a similar strike vote was taken in the other locals?

A. I cannot answer that, sir.

Q. There has not been a time, has there, in the last years, except with respect to the Indiana local over here in Lake County, where your group of locals, those that we talked about earlier this morning, that at least in dealing with any employer who operates in the jurisdiction of all of them, you have always maintained a united front, have you not?

A. That is quite right, sir, we have.

Q. And whatever, if any, differences of opinion may exist between the locals, those are settled inside your own family?

106 A. That is a fact, sir, yes, sir.

Q. Now, if you were to go on strike, pursuant to the vote you had taken at Jewel Tea, although you hoped you would not have to strike, but if you would have had to strike, what would your local have done and the cooperating locals, so far as you know?

A. I assume that we would have voted together on such a strike.

Q. And that would have meant a notice to all of Jewel's butchers to stay away from work, as the first step, isn't that correct?

A. Yes, sir.

Q. And would you have notified other labor organizations of the strike?

A. Yes, of course.

Q. Including the retail clerks?

A. That is correct.

Q. Did you propose placing pickets at each of the Jewel stores?

A. If required, sir, of course.

Q. And the purpose of those pickets would be two-fold, would it not? That would be not to work and to  
107 advise the public not to come in and buy anything in the store?

A. That would be one point, sir, yes.

Q. And what would be the other point?

A. I would presume to have a sympathetic reaction against the deliveries that might come to the store.

Q. And that would shut the store down, wouldn't it?

A. There would be some possibility of that, sir.

Q. Well, how long could a modern store operate without deliveries, do you have any idea?

A. No, sir, I do not. I have never had a strike to contend with, so I cannot answer that.

Q. Well, you are familiar with strikes that the retail clerks and others have had, aren't you?

A. No, sir, I am not. I am not thoroughly familiar, but only by hearsay.

Q. Don't you realize the fact that if deliveries were shut off, sir, that they would run out of milk and butter in a day or two and that they could not—

A. (Interposing.) I would imagine that they would, yes.

108 Q. And they could not sell any meat because they would not have any membership there?

A. That is correct. That would be right.

Q. And there isn't anybody in this whole area that we could bring in to cut meat, sir, because you have substantially all of the qualified meat cutters in the whole area, isn't that right?

A. That is pretty much accurate, yes, sir.

(Whereupon at 12:30 o'clock p.m. a recess was taken until 2:00 o'clock p.m. of the same day.)

110 Q. Mr. Kelly, would you be good enough to resume the stand?

Before we really get back to where we left off there are a couple of things this morning that I should have perhaps made clear that I did not.

Now, with restriction against night vending of meat that prevails in the self-service stores with these counters which we discussed this morning where the meat is in there, and these placards such as Exhibit No. 3 that are up there, it is a fact, isn't it, that the method of carrying out or implementing the restriction, depending somewhat upon the equipment of the particular store it's simply to spread a paper right across the meat? A piece of brown paper?

A. In some stores, yes.

Q. In other stores it is done how?

111 A. With a wire grill.

Q. With a wire grill that is put over that?

A. It is fastened in the plates.

Q. The meat is in there, it's in the counter? It is not taken out and it is perfectly safe in its refrigerated con-

dition and it is just covered up either with a piece of paper or with a wire grill so that it is visible or partly visible, but the customer cannot get at it?

A. It is not visible, because even in the case of the wire grill, they generally put a piece of paper across it as well.

Q. You can kind of look under the edge of that paper and see the meat that is on—every customer that comes in there realizes that the meat is there?

—It just is covered up with a piece of ordinary wrapping paper spread across, isn't that right?

A. In some cases, yes.

Q. And in most cases, generally speaking?

A. I cannot answer that.

112 Q. Now, going on to this matter of the strike, we are trying to pick up where we left off this noon:

Do you recall we had gotten to the point of where you had testified that a vote was taken in your Local in favor of a strike against you and "National Tea on the 24th of November 1957?

A. Yes, sir.

Q. It is a fact, is it not, that you communicated the fact of that vote to Mr. Vorbeck as a representative of Jewel?

A. I believe I did, sir.

113 I assume you also communicated it to someone representing National Tea?

A. Yes, I did.

Q. And it is a fact also that you told them that the other locals in your group had taken similar votes and would go along with it, isn't that right?

A. I cannot recollect that, but I would presume they had taken similar votes, yes.

Q. Do you recall whether you told Mr. Vorbeck what



a strike would mean to Jewel if you had to go ahead with it?

A. No, sir, I didn't tell Mr. Vorbeck anything of that kind.

Q. You have been dealing with him for—you had been dealing with him for several years prior to that time, and I assume you had learned that—that he is conversant with labor matters in a general way and the general way that Unions operate?

A. Well qualified, sir. Yes, sir.

Q. And one well qualified in the labor field where they are representing the field, as you do, or management would know, would he not, that a Union, if it went out on 114 a strike of the kind your members had authorized, would picket, would endeavor to, and probably could, stop deliveries and do the other things we discussed this morning; isn't that correct?

A. I cannot answer that for Mr. Vorbeck, as to what his knowledge of that condition might be, but I would judge his being in the field he should know these things, yes, sir.

Q. They are pretty much ABC things to anybody in the labor field, aren't they, in modern day and age?

A. Well, there is a variance, of course. They pretty much run a rule of thumb, I would say.

115 Q. Mr. Kelly, I hand you a Xerox copy of a letter you sent to your membership under date of November 29,—

Mr. Segall: What year?

Mr. Christensen: Of 1957.

By Mr. Christensen:

Q. (Continuing.) —that is two days after this strike vote that was taken on the 27th—strike that—that is a

few days after the strike vote was taken, taken on the 24th.

And in there you report that Jewel and National Foods have capitulated and would yield to your terms; is that correct?

You reported also to your membership that Jewel had written you a letter stating:

"Under the circumstances we have decided to sign under the duress of the strike vote of your membership."

Do I recite it correctly?

A. Yes, sir, you do.

116 Q. And that was the fact of the matter? So far as you knew it, you were correctly reporting the facts to your membership, were you not?

A. I was quoting from a letter from Jewel.

Q. Then you go on to say in the next paragraph:

"Jewel will, we are sure, attempt to disrupt the fine working conditions that we fought so long to obtain. If night operations and with it, absence from your homes and families comes to the Chicago meat cutters, it will be brought on by the Jewel Tea Company. We have the utmost admiration for the progressiveness of the Jewel operation, but feel that with their expansion, they are riding rough shod over the personal feelings of their employees while in search of the Almighty dollar. Night operation is something brought on not by necessity but by greed. Its history proves that those who want it most are the first to  
117 want out when the one night they wanted becomes seven nights instead. When we have seven nights, which, if Jewel is successful, we ultimately will have, then nobody profits, and those who cry the loudest will be the first to want out."

Do I read your letter correctly?

A. You do, sir.

Q. Now, I will ask you if it is fair to summarize that to say that you were telling your membership that this whole controversy really is a controversy between Jewel on the one hand and the rest of the industry and your affiliated locals on the other, and if it should be that we get night operations, Jewel is responsible for breaking up the industry pattern; isn't that correct?

A. Mr. Christensen, on the first part of your question, may I have it repeated, please?

Mr. Christensen: Certainly.

(Question read.)

118 By the Witness:

A. No, sir, that is not correct.

By Mr. Christensen:

Q. All right; let me refer you to your sentence, Mr. Kelly:

"Night operation is something brought on not by necessity but by greed."

Would you be in favor of night operations if you felt they were necessary?

A. I would have to leave that decision to the membership that I represent. I could not answer that.

Q. I didn't ask you that. I asked you what you would be in favor of?

A. As an individual, if it would be a necessity, I would be in favor of it.

119 Q. And as the chief executive officer of your Local, the dominant Local, you would be in favor of it?

A. If it was a necessity, yes.

Q. Now, what would be a necessity?

A. I do not know.

Q. So these are idle words in here, are they? You don't know what you are talking about?

A. Yes—

Q. You don't know what necessity is? You just stuck it in there?

A. In general, I am pretty sure what I am talking about, Mr. Christensen.

Q. Then please tell me what you meant by necessity.

A. I don't know the necessity, because the necessity in my opinion has never arisen.

Q. Would inability of a substantial number of housewives to purchase their meat between the hours of 9 and 6 p.m., on five days of the week, create a necessity in your judgment?

A. It could—

Q. Your definition?

A. It could create a consideration toward it being 120 a necessity, but I don't think that would be sufficient.

Q. If ten per cent of the housewives couldn't without considerable inconvenience purchase meat, would that create a necessity that would justify the night operation?

A. Not under the present structure of the hours, shopping hours, this could not create that kind of necessity, no, sir.

Q. I didn't ask you that. Now please listen to the question, Mr. Kelly.

If the ten per cent of the housewives in this area we are talking about, your blacked out area, in the view of your affiliated Locals, could not without great inconvenience purchase fresh, red meat during the hours of 9 a.m. to 6 p.m., would that create a necessity for night operations, yes or no, is all I am asking.

A. I would say no, sir.

Q. If twenty per cent of them, would that create a necessity?

A. I would think not, sir.

121 Q. Twenty-five per cent?

A. Mr. Christensen, I can't place a percentage figure on what becomes a necessity in this regard. Now you can raise the figure to seventy-five or eighty-five, and I would still be forced to give you the same answer. I do not know that.

Q. So that if seventy-five per cent, if I understand your answer, if seventy-five per cent of the housewives in the Chicago area couldn't purchase fresh meat save at great inconvenience during the hours of 9 to 6, there still would be no necessity for night operations, under your definition of the word "necessity"?

A. I do not know that, sir.

122 Q. The contract negotiations, in 1957, contained a restriction on market operating hours for the sale of fresh red meat, did it not, 9:00 to 6:00?

A. It did, sir.

Q. The next contract negotiations took place in the fall of 1959?

A. Yes, sir.

Q. At that time, in those negotiations, did Jewel again seek to have night operations?

A. Yes, sir.

Q. Did you resist it, your bargaining group?

A. Yes, sir.

Q. Did Jewel ever cease or voluntarily withdraw its demand for night operations?

A. No, sir.

Q. Did the rest of the industry agree with you to continue the ban on night operations?

A. Yes, sir.

Q. And did Jewel again capitulate, reserving its rights?

A. Yes, sir.

Q. Did roughly the same thing take place in the fall of 1961?

123 A. Yes, it did.



Q. Mr. Witness, I show you Plaintiff's Exhibit No. 124.4 for identification, and ask you if that is the executed contract, between your Local No. 546—and Amalgamated Local 546, sir, covering the years 1957 to 1959, pertaining to service markets?

A. Yes, sir, it is.

Mr. Christensen: Counsel has agreed with me, with your permission, to stipulate that Plaintiff's Exhibit 4 and Plaintiff's Exhibit 5 are respectively the services contracts and the self-service contracts for the years of 1957 and 1959 negotiated in the general manner the witness has testified to.

Plaintiff's Exhibits 6 and 7 are respectively the service and self-service contracts for the years 1959-1961, for the service and self-service markets, and that on each of them, prior to execution, is starred and written in pertaining to the provision as to a limitation on the right-to-strike clause, and that provision states "agreed to by Jewel Company, Inc., unless and until the decision of the United States Court of Appeals for the Seventh Circuit, in the case of Local Union 546, et al. v. Jewel, is reversed," and the same endorsement on the form appears as to Article 5, which is the restriction on market operating hours.

It has also been stipulated that Exhibits 8 and 9 are booklets which are correct copies on the 1961 to 1964 service and self-service contracts. There is no endorsement on them, but that there was a letter of reservation sent in by Jewel, of the same legal tenor and effect as the endorsement shown in the 1959 contract.

I can put the letter in, if you wish, Bernie.

Mr. Dunau: May I see it?

Mr. Christensen: And we have agreed to mark that last recital?

Mr. Dunau: Yes.

Mr. Christensen: It just saves putting the document in.

126 Mr. Dunau: We will so stipulate, your Honor.

Mr. Christensen: I move the admission into evidence of Exhibits 4 to 9, inclusive, with permission to substitute copies of Exhibits 4 through 7, inclusive.

The Court: Admitted. I would like to have a copy here, however.

Mr. Christensen: We will have one for you, sir.

(Said documents so offered and received in evidence were marked respectively PLAINTIFF'S EXHIBITS 4, 5, 6, 7, 8 and 9.)

127 By Mr. Christensen:

A. Mr. Kelly, during this continuing controversy between yourself and the Jewel Company, did you become aware that Jewel was conducting a sampling or questionnaire operation amongst its customers as to their desires with respect to night operations?

A. When was this, please?

Q. I show you a letter you wrote on January 22, 1958.

A. Yes. I was aware.

Q. You became aware of that in early 1958, and you protested it, didn't you, and said it was unfair?

A. I cannot recollect what was in the letter, but I am sure we had some reservation as to the manner in which they were conducting it, yes.

Q. What was your reservation as to the manner in which Jewel conducted it?

A. Offhand I can only remember that we felt the questions were somewhat slanted, that this could be corrected.

That is the only thing that strikes me.

128 Q. You were aware that progressive merchants sample their customers as to their desires?

A. Yes, of course.

Q. To find out at least what the customer thinks is desirable or necessary?

A. Yes.

Q. Has Amalgamated Local 546, or any of your affiliated locals, ever directly or through any agency or advisory group, sampled the public to see what the public thinks be the necessity of night operation?

A. Not the public, no, sir.

Q. Would it make any difference to you what the public thought about it?

A. Yes.

Q. And what percentage of the public would have to think contrary to the way you think to be able to induce you to change your mind?

A. This is a somewhat familiar question, and I believe I answered before that I couldn't answer it. I cannot answer this question.

129 Q. At least 25 per cent of the buying public wouldn't influence you?

A. I can't answer that, sir.

Q. Well, you have testified this morning that you are never going to change your mind about night operations, as I understand it, and you have so informed your membership, haven't you?

A. No, sir.

Q. Now, in a supermarket operation, in the typical Jewel operation, the butcher does not collect the money for the meat that is sold in the store, does he?

A. In the self-service operation?

Q. In the self-service operation?

A. No, sir.

Q. That is collected by an employee known as a checker, who is near the door of the store at a turnstyle or a canal or channel through which the customer must pass, and the checker totals up the goods, whether they be meat, gro-

ceries, or produce, and gives them a slip with the total purchase price and collects the money?

A. Yes, sir.

130 Q. Up until that time in the operation of a store, of course as a customer goes and selects three pounds of beef and then she buys some potato chips and some produce, and suddenly finds that she does not have enough money or changes her mind entirely about the purchase of the meat, she is at liberty to take the meat back to the self-service counter, put it in there, and not complete here purchase, isn't that correct?

A. I would presume so; yes, sir.

Q. Your Union has no jurisdiction over the checkers whatsoever, does it?

A. No, sir, we don't.

131 Q. And you have nothing to say as a Union over their hours or conditions of employment, do you?

A. No, sir, we don't.

Q. If they want to work 15 hours a day, seven days a week, that is not within your jurisdiction, is it?

A. No, sir.

Q. During the 1961 negotiations did Jewel Company, over the signature of E. T. Vorbeck, submit to you an offer?

Mr. Christensen: I will have a copy that I will ask to have marked as Exhibit 10, for identification.

(Said document was marked Plaintiff's Exhibit No. 10 for identification.)

By the Witness:

A. Yes, sir.

By Mr. Christensen:

Q. And did your group reject those offers?

A. Yes, sir.

Q. And was the basic reason for rejection the same

as you have had before, that the rest of the industry, together with you, had indicated acquiescence upon  
132 a restriction of further hours, and you were going to go along with that agreement and reject this offer?

A. We accepted the majority of industry proposal, yes, sir.

Mr. Christensen: I will offer Plaintiff's Exhibit 10 for identification into evidence, if it please the Court.

Mr. Dunau: No objection.

The Court: It is received.

(PLAINTIFF'S EXHIBIT 10 was received in evidence.)

By Mr. Christensen:

Q. Two or three times we talked about these negotiations and, so the record is clear, is it essentially true that in the 1954 negotiations, or '55, rather, '57 and '59 and '61, that at some appropriate time prior to contract negotiations you would inform the industry of what your demands in general were for the ensuing contract period?

A. Yes, sir, that's correct.

Q. And then somehow a group of the leading operators would get together, you would perhaps have a preliminary meeting with them and they would have an informal committee and bargaining would take place running, usually, through several sessions at some place down here in the Loop?

A. In essence this is correct, sir.

Q. And sometimes the employees would have one man as their chief spokesman who would continue on through the whole series of meetings, sometimes they would shift spokesmen? They had no set pattern on that, is that correct?

A. That is quite right.

Q. And at various times, as the negotiations progressed,



you, as chairman and spokesman for the labor side, would ask for a recess and caucus with the representatives of the other Locals? Sometimes it would be the other way around and the industry people would get together and so on. You would horse-trade back and forth?

A. This is absolutely right.

Q. Now there came a time, did there not, when Local 189, outside of Group 1 of Local—

Mr. Christensen: Strike that.

134 By Mr. Christensen:

Q. Group 1 of Local 189 is what I call a subdivision or a portion of Local 189?

A. Yes, sir.

135 Q. And there came a time when except for this subdivision or group of Local 189, night sale of meat was arranged in this surrounding territory; isn't that right?

A. I would say so; yes, sir.

Q. Did you become aware in September, 1962, that the Jewel organization was conducting a survey amongst its employees who were in the jurisdiction of 189, who worked nights, as to whether they objected to it, found it ruinous to their health, or in any way deleterious to their married life, or upsetting to the national welfare, or anything else?

Mr. Dunau: Object, your Honor, to that question. I don't quite see what deleterious to health, welfare to the nation, has anything to do with anything that is at issue in this case. I don't understand it.

136 Q. Did you become aware they were conducting a survey amongst their employees as to whether they objected to working nights as long as they were paid time and a half?

A. I did, sir.

Q. Did you then initiate and spearhead the sending out of return postal cards, such as Plaintiff's Exhibits 11 and 11-A?

137 Q. And so far as you know that stopped that survey by Jewel right in its tracks, didn't it?

A. Frankly, I don't know the answer to that.

Q. You don't know the answer to it?

A. No, sir.

Q. I observe that you required your members to sign their name and address on their returns if they answered this postal card?

A. We asked that they sign it. We received some back without signatures.

Q. And, of course, if they signed, the identity of the workman who said that he was happy to work nights would not be strictly confidential from you or any of the officials of the various local unions, would it?

A. I think the statement on the card speaks for itself.

Q. That is not the question I asked you.

A. Of course, it would not be confidential. The recipient would know.

Q. And the recipient is Local Union No. 189, 262, 320, 350, 546, 547, 571, 612, 638; isn't that right?

138 A. That is right, sir.

Q. So that anybody who signed his name to that and gave an answer that wasn't pleasing to your Executive Board, would know that he might have to appear before that merciless Executive Board, isn't that correct?

Mr. Dunau: Object, your Honor. There is no evidence in this record concerning disciplinary proceedings with respect to—

The Court: Sustained.

Q. Now, how many members were present at the meeting at which Mr. Gorman made that speech about your merciless Executive Board?

A. Knowing the sizeability of our Sunday contract meetings, I would estimate there was upwards of three thousand people.

139 Q. A good many of them are still working for Jewel, are they not?

A. I would think so, yes.

Mr. Christensen: I will offer the document in evidence, and we will furnish you with some Xerox copies.

140 The Court: Received in evidence.

(Said documents, so offered and received in evidence, were marked PLAINTIFF'S EXHIBITS 11 and 11-A.)

Mr. Christensen: Counsel, I wonder if we could have a stipulation that the counterpart of the various contracts we have introduced for '57, '59, '61, were entered into on or about the same dates by these other locals, that is, 262, 189, Group 1, 547, 638, 547, 571 and 320.

Mr. Dunau: I believe we can stipulate as to all except Group 1 of 189, which has a separate contract which is not of the same type as those that are already in evidence.

141 Mr. Christensen: All right.

Mr. Dunau: But it does, Group 1 of 189, does have the same marketing hours provisions.

Mr. Christensen: Yes.

Mr. Dunau: As is true of the other agreements which are in evidence.

Mr. Christensen: Yes. And the other differences are immaterial to this lawsuit.

Mr. Dunau: Yes, sir. They are.

Mr. Christensen: That's all for Mr. Kelly, if it please the Court.

142

*Cross-Examination by Mr. Dunau.*

Q. Mr. Kelly, what is your title at the present time with Local 546?

A. Secretary-treasurer.

Q. Were you elected to that position in 1941?

A. Yes, I was.

Q. And have you been elected to that position by the membership of the Local Union at the expiration of each term of your office?

A. Yes, I have.

Q. Were you elected as a vice-president of the Amalgamated Meat Cutters International in 1941?

A. I was appointed by the International Executive Board to a vacancy that was existing then, and in 1942, I was elected by convention action.

Q. Were you elected in 1942 by the delegates, sir, to the International Convention?

A. Yes, sir.

Q. And have you been reelected at the expiration of each term of your office by the delegates to the International Convention?

A. Yes, I have.

143 Q. Will you describe for us the geographical location of Local 189, a group not in Group 1 alone, please?

A. Well, that is a little difficult to say, except that 189 does butt up against Local 546, and a part against 262, and extends over across into Rockford, and goes downstate as far as Decatur, Illinois.

It takes in many, many communities in that area.

Q. How many Local Unions of the Meat Cutters Amalgamated International are there in the State of Illinois?

A. That is difficult for me to say because I represent District No. 10 as International vice-president, and District No. 3 overlaps and comes into the State of Illinois.

but within my immediate district, the immediate district that I represent, there are seventeen Local Unions.

Q. And there are, then, at least seventeen Local Unions within the State of Illinois, is that correct?

A. Yes, and in fact there are more than that.

Mr. Christensen: Retail, Bernie?

144 By Mr. Dunau:

Q. The Local Unions I am talking about would be the Local Unions representing Meat Cutters in retail markets, and there are seventeen Local Unions representing Meat Cutters in retail markets?

A. No.

Q. Well, how many are there that represent Meat Cutters in retail markets?

A. To my knowledge, in the entire State of Illinois, there would be eleven.

Q. What is the membership of Local Union 189, sir, in Group 1?

A. It seems to me the figure for that area runs somewhere around 500 or 600 members.

Mr. Christensen: Mr. Dunau, if you wish, over part of the evening sometime, we will insert that figure in here. We do not have it, but we will insert it on the face of Plaintiff's Exhibit No. 1, if you wish us to.

146 By Mr. Dunau:

Q. Mr. Kelly, with respect to these exhibits which have been introduced as Plaintiff's Exhibits 11 and 11-A, how many cards were sent to the employees of Jewel Tea Company?

A. Slightly in excess of 1,500.

Q. And did that comprise all the meat cutter members employed by Jewel Tea Company including the group represented by 262, 189, Group 1, 320, 571, 678, 547, and 546, and others?



A. Yes, and others.

Q. What were the others?

A. Local 612, of Joliet, and Local 350 of the Gary-Hammond area.

Q. Then all employees of the Jewel Tea Company in the retail meat market were sent these cards, is that correct?

A. That is correct.

Q. What return did you receive?

A. Out of slightly over 1,500 cards that were mailed out, we had, as of this morning, 759, plus 28.

147 Q. 759 says what, sir?

A. 759 have indicated their opposition to working nights; 28 said they were in favor of working nights.

(Witness excused.)

149 FRED A. WOERTHWEIN, having been first duly sworn, deposeth and saith as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you please state your full name and address?

A. Fred A. Woerthwein, W-o-e-r-t-h-w-e-i-n.

Q. Where do you live?

A. 3841 Howard Avenue, Western Springs, Illinois.

150 Q. Are you employed by Jewel Tea Company?

A. I am.

Q. What is your present capacity?

A. Grocery Operating Manager.

Q. How long have you been in that capacity?

A. Since August, 1960.

Q. How long have you been employed by the Jewel organization all told?

A. Twenty-nine years and two months.

Q. You have worked up to the various stages of the organization, have you?

A. Yes.

Q. What did you start at?

A. I started as a part time boy.

Q. Then what did you do?

A. Became a clerk.

Q. Then what?

A. A Grocery Manager.

Q. Then what?

A. District Manager for a group of five stores.

Q. Then what?

A. A Personnel manager for a group on the south  
151 side of Chicago that was a division of forty stores.

Q. And then what?

A. Superintendent for that same group of stores.

Q. And then what?

A. I was transferred into Sales—into Development activities in 1958.

Q. Then what, to your present position?

A. Yes.

Q. Now, without elaborating too much will you explain for the record the organizational hierarchy of the two branches of the Jewel Food Store business as between what you would call market operations, what we laymen think of as meat, and the grocery divisions?

A. Well, roughly we have two parallel operations, one which is strictly that pertaining to meats and the other pertaining to all other parts of the food stores.

At the top there is a Meat Operating Manager and a Grocery Operating Manager. Each of us have eight Division Managers. A Division is comprised of approximately 35 to 40 stores.

152 Q. And so you have under you a Grocery Division Manager who has 35 to 40 stores, each of them has a Grocery manager?

A. Yes.

Q. On the market side of the business your counterpart has a Division Meat Manager and he has a so-called Market Manager in each of the stores, is that correct?

A. Yes, sir.

153 Q. In the store itself there is no store manager to whom everyone reports?

A. No, there is not.

Q. As part of your duties during this progression that you have made up the ladder of the Jewel organization, have you had occasion to ascertain with respect to comparable chain store operators, Jewel's position in the industry with respect to the sale of meats?

A. Yes, sir.

Q. For the last ten years, what relative percentage of Jewel's income has been derived from the sale of meats with respect to its total income from its stores?

A. It is roughly 30 per cent of the total sales—are represented by market sales. It varies from 31 per cent to about 29 per cent at the lowest.

Q. That has been a consistent ratio or proportion for the last ten or fifteen years?

A. Quite consistent.

Q. During that time the chain has expanded, but 154 this same division of roughly 30 per cent for the meat and 70 per cent for groceries has persisted?

A. Yes, sir.

Q. Do you have available to you, as part of the records you consult in the operation of your business, business surveys made up by reputable business organizations of your industry indicating what the comparable ratio is in competitive or similar chains, both in this area and throughout the country?

A. I have two studies with me at this moment.

One was put out by the Harvard School of Business, Operating Results of Food Chains in 1960. It was published in 1961.

On Page 33, under "Exhibit 1," the per cent of meat sales to total in small chains is given as 26.60. In the middle volume chains it is 25.70, and in large chains, as 25.12.

A small chain is defined here of less than twenty million dollars of total annual sales.

A middle volume is from twenty to one hundred million dollars annual sales, and a large chain is in excess 155 of one hundred million dollars annual sales.

Q. Have Jewel's sales, total sales, been in excess of one hundred million dollars for several years?

A. Yes, they have.

In addition to that fact—

Q. Do you have another survey there?

A. Yes, The Supermarket Industry Speaks in 1962.

Q. Just before you go on to that, would you please explain who published this?

A. It is a publication put out by The Supermarket Institute. It represents, I think, 6,081 stores throughout the country. It is compiled by Curt Kornblau of Supermarket Industry.

In all of 1961, from the 6,081 representative food chains, the per cent of meat sales to total is given as 25.2 on Page 13.

156 Q. Now, is that a source of information, statistical information, on your industry that is used by the industry generally in assessing their own performance against that of the industry?

A. To the best of my knowledge, it is one of the most reliable of all sources of information.

Q. Based upon statistics furnished by these some six thousand operations?

A. Yes, sir.

Q. Now, has that relative ratio of 25 per cent meat to total sales for the average of the industry, as opposed to Jewel's ratio of 30 per cent meat, existed steadily for several years?

A. Yes; it is something that has been in existence for a great number of years, and it is the—well, this was done really by design on our part. The whole success of Jewel has been built around their markets, and this whole story starts back in about 1938, when Jewel first went into the meat business in a big way, introduced nothing but choice quality meat at that time, and instituted a new trim policy for the purpose of bringing a better product to their customers.

Q. Well, now, you speak with the skill of one who is in the art. What do you mean, "A better trim policy"?

A. Less fat and less bone, sold to the customer.

Q. You mean to take a piece of meat and trim off the unusable portions of it and sell more edible meat per package?

A. Just about pan ready.

The Court: You mean before it is weighed?

The Witness: Before it is weighed, yes, sir.

The Court: That is an important item.

Mr. Christensen: Yes, your Honor. Thank you.

The Court: And I speak from experience.

By Mr. Christensen:

Q. Now, with respect to your operations, which are grocery operations, why are you from a grocery point interested in the meat phase?

158 A. Well, I know from experience that our level of sales is almost totally dependent on our meat level of sales, even to the point where our whole merchandising



program each Monday is built around the product and the type of product that we are going to offer in the market for that particular week. This is done by design.

Q. So that in inducing the housewife, because of the excellence of your meat service, to purchase meat from you, you hope she will also purchase her dry groceries and produce; is that the net of it?

A. Yes, sir.

Q. Was an opinion poll taken of actual Jewel customers in the store on the subject of night operations in the sale of meat early in the year 1958?

A. Yes.

Q. Under whose supervision was that conducted?

A. Under mine.

Q. At that time you were in—

A. I was in Store Development.

Q. Store Development. Will you explain the mechanics and means by which this poll was carried out?

159 A. Well, I have a sample of the form that was sent to the stores.

Mr. Christensen: I will ask to have this marked Plaintiff's Exhibit 12 for identification.

(Said document was marked Plaintiff's Exhibit 12 for identification.)

Q. Tell what was done with these questionnaires, such as Plaintiff's Exhibit 12 for identification.

160 A. I made a distribution in total of 100,000 to all of these stores, with the exception of the stores in Antioch, Crystal Lake, Joliet, Fox Lake, and the Indiana stores, all of which at that time were able to sell meat at night. There was no point in questioning these customers.

Q. So that you questioned in all stores except those that were selling meat at night?

A. Yes.

Q. All right.

A. And I sent varying quantities—there were a group of stores that received 400 of these questionnaires. There was another group which received 600 of these—

Q. May I shorten that, Mr. Woerthwein? Did you send them in quantities based upon your judgment of the number of customers passing in through the particular store—

A. Yes.

Q. Some are big stores and some are small stores?

A. Yes, sir.

Q. Now, how did the customer actually receive 161 these sheets?

A. It varied a little by store, depending on the amount of people they had there. In the larger stores they were passed out by some person in front of the store to the customer directly. In other stores—this is medium volume and smaller stores—they were put out for the customer to take.

In some cases this was put in a stand adjacent to the market on what we called a turkey order taker.

Q. Upon what?

A. It is a little stand that we use for taking turkey orders from customers prior to holidays. This was a stand that she had grown accustomed to.

Q. All right.

A. In the main, these were the two methods that were used.

Q. Were the results then submitted to you ultimately?

A. Yes, sir; they were all sent to me.

Q. Tabulated by you?

A. Only—

Q. Under your supervision?

A. Yes.

162 Q. What did they show?

Mr. Dunau: Objection, your Honor.

By the Witness:

A. Out of the 100,000 that—

Mr. Christensen: Wait a minute.

Mr. Dunau: Objection, your Honor. This survey had not been shown to be admissible in evidence. There has been no groundwork made for the introduction into evidence of the results of this survey.

164 Mr. Christensen: Your Honor, may I ask a question or two more of the witness before you are called upon to rule?

The Court: Yes.

Q. In this survey was any customer interviewed?

A. No, sir.

Q. At the time of this survey was any litigation pending?

A. No, sir.

165 Q. Were any lawyers present at the time these questionnaires were made available to your customers, sir, unless they happened to be customers who, when they were not customers of yours, were out trying to work hard and earn enough money to come in and patronize your store?

In other words, no company attorneys were present, were they?

A. No, they weren't.

Q. Is this simply a questionnaire addressed to the customer without coercion or suggestion of answer, but on its face gave the customer an opportunity to answer the questions thereupon, and to make the indication that the form itself gave the customer the option of making?

A. Yes, it was exactly that.

Q. It was?

A. Yes.

Q. Now, Mr. Dunau was reading from this learned, or unlearned, rather, work. It is not an authority; it is a suggestion. It is addressed usually to those cases in which someone polls people to learn this and other things 166 through those interviews, and is more or less depth, but that is entirely beside the point.

This questionnaire, the Court has a copy of it before it. It was given to the customer, and—well, how many questionnaires did you receive back and finally tabulate answers on?

A. 18,775.

Q. And they were collected over a period of approximately how long?

A. About ten days.

Q. And in every Jewel store in the chain?

A. Except those which I mentioned.

Q. Except those that had night operations. Now, that is correct?

A. Yes.

Mr. Christensen: Any survey, if it please the Court, is subject to this, that or the other criticism. Its weight may be weighed by the tribunal as it sees fit and believes, under the evidence, as to how the particular survey was made.

167 The Court: It is the Court's view that this is not the type of survey referred to in this document from which counsel read, but it seems to me that in order to get this evidence in, that you will have to go a little farther.

170 Q. Were you present at any of your stores or at any of these stores during the time these circulars were put out?

A. Yes.

Q. Did you observe the way they were being handled?

A. I saw the survey conducted in LaGrange, handled via this little stand.

Q. The turkey counter?

A. But there was no connection in that regard with the customer at all. It was at her option.

I can, however, bring in any number of—

Q. (Interposing.) Yes, I understand, but that is the only one you have personal knowledge of?

A. That is the only one I personally remember.

Q. And that you have personal knowledge of?

A. Yes.

The Court: Were those left on the stand and there was no one handling them out to the people?

The Witness: That is correct, in the particular case that I observed.

The Court: All right.

171 By Mr. Christensen:

Q. You testified that you issued instruction to this store manager either to have someone in the larger market to hand these to the customers, sir, as they were leaving or were in the market?

A. No, at the time they entered the store.

Q. When they entered the store?

A. Or at the time they left the store. That was strictly at the option of the particular store.

Q. And in the small stores, they set them up near the meat market counter, or the turkey—

A. (Interposing.) Order-taking stand.

Q. Or the order-taking stand that the customers were familiar with?

A. Yes, sir.

The Court: I think you need a little more evidence than that.

Mr. Christensen: I think so, your Honor, and I will try to supply it if I may hold up now and then I will renew this offer later on.



That is all I intend to offer by this witness, and I  
172 am perfectly happy to have Mr. Dunau cross-examine  
him now, if he wishes, or tomorrow, if I can get the  
survey in.

Mr. Dunau: Then we have no further questions at this  
point of this witness, your Honor.

173 JOHN ALFRED BREWER, called as a witness by  
and on behalf of the plaintiff, having been first duly  
sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Mr. Brewer, will you please state your full name for  
the record?

A. John Alfred Brewer.

Q. Where do you live, sir?

A. 221 Blackstone Avenue, in LaGrange.

Q. Where?

A. LaGrange.

Q. How long have you been in the meat business?

A. Well, directly in the meat business, connected with  
it in some way or another, about twenty years.

Q. What has been your history in the business?

174 A. Well, I have been in more or less of a super-  
visory capacity for those years, and also in the devel-  
opment of self-service meats.

Q. Who have you worked for and what have you done?

A. Well, at Jewel you are speaking of, now?

Q. No.

A. Well, my whole business life has been with Jewel  
and Loblaw.

Q. That is another food chain?

A. That was the chain originally in Chicago that Jewel bought.

Q. All right, and just state what your activities have been in that particular field.

A. In the meat field or in total?

Q. No, in both groceries and meats.

A. Well, I started out as a clerk. Then I graduated to a store manager; then it was to a district manager; and then to a division manager, and then to an operating manager.

During the war I was in charge of both meats and 175 groceries in operations, and then after the war I was given the assignment of developing self-service meats.

Q. When did you switch from Loblaw to Jewel?

A. That was in March of 1932.

Q. And since March of 1932, sir, you have been with Jewel entirely, is that correct?

A. That is correct.

Q. When did you begin to work in the meat department?

A. Well, as I say, that was about in 1942. About 1942 was the first exposure to meats.

Q. And what was your duty in that regard?

A. Well, I was kind of a general all around handyman, I would say in the supervisory end of the business. Then during the war, of course, we did almost everything just to keep things running and to keep them going.

Q. And after the war?

A. Well, after the war we continued weighing meats in with the groceries, and then in 1948 I was given the assignment of developing the self-service meats.

176 From that point on—the self-service market, and from that point on I have been directly connected with meats.

177 Q. Now was Jewel the prime mover in bringing self-service of meats into the Chicago area?

A. Very definitely. We—

Q. Will you tell the Court in a general way what the history of the switch or change from service dispensing or vending of meats to self-service vending of meats, how it took place and what it involved?

A. Well, prior to 1948, we made surveys across the country and the growth of self-service meats.

I personally visited a number of areas, and it was my opinion that this was the way to sell meat. It offered the customer a better deal. In 1948, we decided that we were going to go into the self-service meat method of merchandising meat.

The only area that we could do it in was in Local 189, or Elmhurst, Illinois. That was the first market that we converted from service to self-service in September, 1948. In December of that same year we opened one in Barrington, Illinois. We confined our operations, naturally, to the area in which this method of merchandising was 178 allowed under our Union contract. We continued to develop in that area, Wheaton, Glen Ellyn, Aurora and that area.

Q. That is the area indicated by the wavy line going down Plaintiff's Exhibit 1? (Indicating.)

A. If it is 189, yes.

Q. Local 189, outside of Group 1?

A. That's right.

We did that, and we filled up that void in there in all of the markets we had in markets which were large enough in size to convert at that time.

Then I believe it was in December of 1953, if I remember right, that we were given the go-ahead sign to operate in Chicago proper. From that point on, we converted as quickly as we could, because the one that we had had in operation for five years were highly successful.

It was evident to us that Mrs. Consumer liked it that

way of buying her meat, because of the tremendous increase in sales everytime we made the conversion.

That has continued. The only reason we haven't 179 done it in one hundred per cent of our stores is that there is a few of them not large enough.

Q. Now, Mr. Brewer, from your judgment as an experienced meat merchandiser what are the advantages of the self-service system of vending meat for the customer?

A. Well, I think the number one advantage is that we can bring this product to her at the least cost possible. In other words we—

Q. Well you explain why this enables you to bring meat into the hands of the consumer at a lower costs?

A. Well, number one, it increases your sales, therefore increases your tonnage, therefore increases the use of the equipment that is in the markets. It keeps them busy more often.

Q. And by "the equipment" you refer to these expensive cases and counters in which the goods are displayed?

A. That's right. That's only part of it.

We have these big coolers and these big machines and saws. You have an awful lot of equipment in one market that has to be kept going, otherwise the cost will go up.

180 By increasing the tonnage, increasing the purchase of meat by this method we were able to lower the cost to the customer.

Q. Have you had any experience as to the effect of self-service upon the sale of various cuts of meats?

A. Well, from personal experience, yes.

At the time we converted, let me put it to you this way: We had a lot of customers that were of the older type in age that did not particularly care for this new method, but we found out that after a few weeks they liked it and then it was also a great service to the young married wife who did not know round steak from sirloin steak if it were held up to her.

The packages are such, labeled as such, that she can read herself exactly what that piece of meat is. It tells her the weight, the price per pound and the description of what it is so she does not have to ask anybody. She doesn't feel stupid or ignorant. She just picks it up and goes home and says, "I have got a beautiful sirloin steak here," and she is right.

On the merchandising she took the word of the 181 butcher.

These are personal reactions that I personally have had in contact with different people.

Q. That you have had or that you have observed?

A. That I have actually talked to the gals.

182 Q. You have observed these reactions amongst your customers?

A. That's right.

Q. Have you observed what effect that has upon your ability to sell a whole carcass?

A. Well, it definitely has an advantage inasmuch as we can display the whole carcass in the case which she, at no time in my experience, has been able to see.

In doing this you display to her everything from the shanks to the tails, and she can make up her mind what she wants. She sees the loin, the ribs, the hind, the round, everything involved. It has to be displayed under self-service, or you don't sell it. She at no time has ever seen that displayed in that quantity, and in that variety.

Right now we have eighty feet of meat case, where most of the service cases were twenty, twenty-four and thirty-six foot before.

So it did help move the whole animal.

183 Q. She has a visual representation of some of the lesser known but highly edible cuts of meat that she would probably not call for, but seeing them there she very well may purchase them?



A. That's right.

Q. Now, what effect does that ability to dispose of the entire carcass have upon the ultimate selling cost, selling price of meat to the customer?

A. Well, it has a very definite effect. If all we sold were steaks and chops, we would close shop, because that is the cream of the animal. We have to sell what we call the mix, the whole animal, in order to come out.

We could not possibly just sell the steaks and stay in business.

Q. Save at exorbitant prices?

A. Yes, but you wouldn't sell it at exorbitant prices.

Q. Where does Jewel acquire the meat that it sells?

A. Well, we acquire it from Government inspected houses, Government graded beef. We do not have anything below choice.

184 It is acquired from all the major packers, basically outside of Chicago at the present time, because there are not very many left, and in some of the surrounding Chicago areas.

Every bit of meat that we buy is subject to inspection by our inspectors, and they have the privilege of accepting or rejecting every carcass that the buyer has bought, if it does not meet our standards.

We buy nothing but heifers of 600-pound weight. We think that is the best for the public in this area.

Q. So that although you order from a packer or a slaughterer or in any given community so many head of choice beef, and it has been approved by the Department of Agriculture inspectors as such, you still send your own inspectors in?

A. Yes, because—

185 Q. And inspect that and accept some and reject others?

A. It is accepted and rejected daily, based on our quality

standards. We have a certain weight standard which we want, and if it does not measure up to that we reject it, even though it had graded A under Government inspection.

189 Q. Are you familiar with the practices of a substantial number of your competitors, both chain and individual operators?

A. Yes, I am.

Q. Do substantial numbers of them fail to have an inspection system such as yours?

A. Yes.

Q. And in your judgment does that result in a lower quality of meat being offered by them to the public?

A. Well, from my personal knowledge they handle from one to two grades of beef. We do not. So they naturally would have a lower grade of beef than we do.

Q. And even if they had choice, it would not be double inspected as yours?

A. Well, each of us have our own standards. We have, we think, what are the highest standards in the meat industry.

Q. Please answer my question, Mr. Brewer:

Even if they bought the same Government beef it  
190 would not have this double inspection?

A. No.

Q. Which you think in your judgment is beneficial?

A. I do.

Q. Which is reflected in the figures of the popularity of your meat departments?

A. We believe so, yes.

Q. Now is it a fact that if you can keep those self-service counters working, as I term them as "salesmen" for you, that is would people be able to get meat out of them more hours per day than they are now working, that you can reduce the prorata equipment cost?

Mr. Dunau: If your Honor please, that's a leading question.

Mr. Christensen: I agree with you.

Mr. Dunau: I mean if we are getting critical in the case—

Mr. Christensen. I will agree.

By Mr. Christensen:

Q. What is the effect of night operations upon the spreading of your equipment cost as against a pound 191 or a ton of meat?

A. Well, naturally we would have a reduced cost factor involved, because of the use of the equipment during more hours.

Q. You, for several years, have headed up all buying or meats for Jewel?

A. That's right.

Q. Roughly in the last five years how many million dollars of meat does Jewel buy?

A. About five hundred million.

Q. Where does that meat come from?

A. Well, it comes from a number of different areas. We get an awful lot of it from Omaha, Minneapolis, Denver, some points in Illinois, Iowa. We buy it from all surrounding areas.

Q. With respect to Omaha, do your sales from Omaha amount to many millions—your purchases of Omaha 192 cattle amount to many millions of dollars each year?

A. That's right.

Q. And is it a fact that you purchase so much in Omaha that for many years you have been sending an inspector to to Omaha to inspect the meat before it is shipped from Omaha to Jewel in Chicago?

A. Yes, we send one every Tuesday night. Every week.

194

*Cross-Examination by Mr. Dunau.*

Q. Mr. Brewer, in what form does meat come into the Jewel Store, in the Meat Department.

A. Well, it comes basically in sides of beef, which is a half of an animal, or in the forequarter, or hind quarter of beef.

Q. And, of course, retail customers don't buy these sizes of meat?

A. No.

Q. Consequently, when the meat comes into the Meat Department of a retail store, it requires the work of butchers to prepare that meat for retail sale; is that correct?

A. That's right.

Q. Now, I believe you said, Mr. Brewer, that if the self-service Meat Department were to operate at night—and I take it you mean from 6:00 to 9:00 P.M., sir?

A. Or thereabouts, yes.

Q. (Continuing.) —That this would result in increased profits to Jewel because it could spread its cost of 195 operating over a greater number of hours; is that correct, sir?

A. That's right.

Q. Would you explain for me the basis for that judgment?

A. Well, basically we do not need personnel on hand from 6:00 to 9:00 to sell that stuff that was packaged, ready for sale, during the day. That can be sold out of self-service without an attendant.

Q. Would you have to have lights on the—

A. Lights are on, anyway. They are in the grocer's.

Q. Beg pardon?

A. The lights are on, anyway.

Q. And your notion would be that you could have this decreased cost because you would not have to have butchers on duty, sir?

A. Well, I say they are not needed.

Q. Would you have butchers on duty?

A. Not necessarily, no.

Q. When you tell me there will be a decreased cost to Jewel and therefore an increased profit, is that on the 196 basis of no butchers on duty?

A. No, that is in added volume.

Q. But in determining whether you will have a decreased cost, are you taking into account the wage consideration for operating between 6:00 and 9:00 P. M.?

A. Yes, because we have that experience now.

Q. Then your answer is that, taking into account the labor costs between 6:00 and 9:00, you would still come up with an increased profit because of the decreased cost, is that right?

A. Increased volume, yes.

Q. Now, how do you know you would have an increase of volume?

A. How do we know?

Q. Yes, sir.

A. Well, do you want it from a personal experience or from my observation?

Q. I want the basis for your judgment.

A. The basis for my judgment is Mrs. Customer wants to do her shopping while she is in the store in all departments. She has indicated that many, many times. She 197 can't understand why one department is closed and the others are open.

Q. What has that to do with the amount of meat she purchases?

A. She would buy the meat at that time. She would consume more meat.

Q. Why would she consume more meat?

A. Because it is available.

Q. Is it not available before 6:00 P.M.?



A. It is, but not to her. Maybe it isn't convenient for her to come in.

Q. You mean there are families in Chicago that are going without meat because they can only buy it from 6:00 to 9:00 P. M.?

A. Yes. They can't buy it after 6:00.

Q. Are you familiar with any studies that show that less meat is bought in the Chicago market than is bought in other cities?

A. Yes. Surveys indicated that.

Q. What surveys, sir?

A. Well, your per cent total of meat sales.

199 Q. Mr. Brewer, does the Chicago housewife buy less meat than the New York housewife?

A. I can't answer that. I don't know.

Q. Does she buy less meat than the San Francisco housewife?

200 A. I don't know.

Q. You do not know?

A. No.

Q. If she had three more hours during the day to buy meat, do you know whether she would buy any more meat in Chicago?

A. On the basis that it would be more convenient for her to shop at the time she is able to shop, yes.

Q. That statement, does it not, Mr. Brewer, presupposes that people buy less meat in Chicago because they have only 9:00 A. M. to 6:00 P. M. to buy it; is that correct?

A. I would say that is correct.

Q. You would say that.

Now, what information do you have which gives you the basis for a statement that the Chicago housewife buys less meat because she only has from 9:00 to 6:00 in which to buy it?

A. Well, maybe I could phrase it a little differently. Maybe the areas where we now are open would indicate that.

201 Q. What does that mean, sir?

A. That the sales in that area, meat and groceries total, are greater than they are in areas where we haven't got the combination.

Q. Have you made such a study?

A. I believe that is available.

Q. Have you made such a study, sir?

A. Personally, no.

Q. Do you know of any such study?

A. Yes.

Q. What such study do you know of?

A. The study that we have made.

Q. What is this study that you have made?

A. Well, counsel will have to brief me on that.

202 Q. Are you familiar with the study?

A. Yes.

203 Q. When was this study made?

A. Recently.

Q. When?

A. The exact date I don't know.

Q. By whom?

A. By our research group.

Q. Did you read the study?

A. I have seen it.

Q. Did you read the study?

A. I have looked it over.

Q. Did you read the study?

A. Well, how do you read figures?

Mr. Christensen: The question has been answered.

Mr. Dunau: Well, it seems to me to be susceptible to yes or no.

The Court: He said he looked it over. By that do you mean read it?

The Witness: Yes.

Mr. Christensen: I think counsel is trying to conduct a discovery rather than a cross-examination.

204 We will have the study here. Let him just examine this witness upon the basis of his direct testimony.

By Mr. Dunan:

Q. Mr. Brewer, you are an expert on the sale of meat, are you not?

A. Oh, I don't know that I am an expert. I know about it. I don't know what your definition of an expert is.

Q. You are a knowledgeable man about what goes in the sale of meat?

A. Right.

205 Q. Well, Mr. Brewer, do you have any personal knowledge upon which you base your statement that if market operation hours were increased from 6:00 P. M. to 9:00 P. M., the Chicago housewife would buy more meat?

A. Well, all I can say again is this: That I know if the product is available to her, she will buy more, yes.

Q. How do you know that, sir?

A. Well, it is inevitable that she will, because of her request that I get now that she can't buy it, it must be evident that she wants to buy it and cannot.

Q. Is it evident that she would want to buy it between 6:00 and 9:00 rather than before 6:00?

A. Yes, definitely.

Q. That is what is evident?

206 A. That is right, she wants to shop at her convenience, and not at mine.

Q. That is correct, she wants to shop at her convenience and not at yours?

A. Yes, because probably in the evening is when she wants to shop.

Q. Is that your basis for saying that if she had time to shop after 6:00 o'clock that she would buy more meat?

A. Definitely, because when you expose it to her, she always buys it.

Q. And then you are assuming, are you not, sir, that she is not buying as much meat as she wants because she has to buy it before 6:00 o'clock?

A. I would say yes.

Q. You are assuming that?

A. Yes.

Q. Mr. Brewer, if I walk into an A&P store, do I get a poorer quality steak than if I walk in and buy it at the Jewel store?

A. Well, I am not here to rap competitors.

207 Q. You may proceed.

A. You asked me whether you would get a better value in meat at Jewel than you would at A&P.

Q. No, I asked you if I walked into an A&P store to buy a steak if I would get a poorer quality steak than if I would walk into the Jewel store and buy a steak.

A. Well, yes and no.

Q. What does that mean?

A. They handle two grades of beef, and it would be depending on which kind you picked up.

Q. And if I picked up their higher grade of beef?

A. I would say it would be comparable to ours.

Q. Then I would get the same kind of steak?

208 A. Yes.

Q. If I went through a list of chain store operators in Chicago, Kroger, National Tea, Sure-Save, Del-Farm, and the rest, your answer would be the same, is that correct?

A. Very definitely, yes.

Q. Mr. Brewer, if I walk into a service market of Jewel Tea, will I pay more for a pound of meat than if I buy it at a self-service market at Jewel Tea?

A. No.

Q. The price would be the same at both the service and self-service market?

A. That is right, and do you want to know the 209 reason?

Q. No, I just asked you the question.

Is the same true with respect to other operators in the Chicago market operations who operate both service and self-service markets?

Mr. Christensen: If he knows.

Mr. Dunau: Yes, if he knows.

By the Witness:

A. Well, I don't know frankly. If they have—

Mr. Christensen: (Interposing.) All right, that is the end. You have answered.

*Redirect Examination by Mr. Christensen.*

210 Q. You have testified, Mr. Brewer, that Jewel sells the same cuts of meat at the same price per pound that both service and self-service markets do?

A. That is correct.

211 Q. Will you explain why that is?

A. Well, basically because we advertise in the metropolitan newspapers, which reach all homes in the Chicago area, and we cannot take fifteen stores out of that group and say that the prices are higher there, and for that reason we maintain the same price for all of our stores.



Q. Approximately how many markets do you operate?

A. We operate about 245 markets, out of which 15, I think, are self-service.

The Court: Where, in Chicago alone?

The Witness: Yes, sir, in the Chicago trading area.

The Court: Does that include the suburbs?

The Witness: Yes, it includes them, and that map shows about—

Mr. Christensen: And that map includes—and that includes everything on this map, a little north of it?

The Witness: It goes all the way up to Kenosha, and it goes all the way down to Benton Harbor.

By Mr. Christensen:

Q. And down to Benton Harbor?

212 A. And Benton Harbor and Chicago Heights, and all that area down in there, and Kankakee.

That is the operating area which we are in here.

Q. And there are some 250 markets all told?

A. 245 or 246, in round figures, yes, of which approximately 15 are service.

Therefore, we cannot adjust our advertising to fit the 15 little markets, so we maintain the same price at all markets even though our operating costs are higher in the 15 service markets.

Q. And 15 service markets by and large are small, old stores?

A. That is right, that is the only reason they are service.

213 (Witness excused.)

JAMES VICTOR BRODNICKI, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you please state your full name?

214 A. My name is James Victor Brodnicki.

Q. And where do you live, Mr. Brodnicki?

A. 2614 North Lockwood, in Chicago.

Q. And what has been your education, sir?

A. I have attended the University of Illinois, from which I graduated, and then continued on in further studies and passed the CPA examination.

Q. When did you become a certified public accountant?

A. In May of 1955.

Q. By whom are you employed?

A. I believe that was in May of 1956.

I am employed by the Jewel Food Stores.

Q. In the various branches of the accounting department?

A. The various ones.

Q. What is your present position?

A. At the present time I am assistant to the man who heads up the accounting department actual of Jewel Food Stores, who is an office manager-comptroller type man.

Q. Were you asked to make a study of the effect of night operating hours upon Jewel stores, sir, with respect to their volume of business in meats and groceries and their profitability?

215 A. Yes, I was.

Q. Did you find that in the Jewel chain there were certain stores in which you had a record for a sufficiently long time to give you a satisfactory accounting base as to what

they had done before and after being permitted to sell meat at night?

A. Yes.

Q. Mr. Brodnicki, where were these particular 216 stores?

A. They were in a variety of communities.

Q. Do you have notes with you that will identify the stores?

A. Yes. Actually, there were two in Aurora, one in Geneva, one in Elgin, two in Joliet, one in Hammond, one in Whiting and one in Michigan City.

Q. Now, to determine the effect of night operations, how long a period do you figure was necessary to give you a fair base and a fair sample?

A. I felt you needed one year before a change, and a one year after the change, because of the seasonal variety of our business, which has peaks over the holidays.

Q. Well, would you just explain the seasonal variety so that the Court will understand what you mean by that?

A. We have a higher rate of business around 217 Thanksgiving, Christmas and New Years, and it tends to taper off in the beginning of the year, and it is also a little bit slower during the summer, and then it picks up during the cooler fall months, so that we do see a fluctuation in our business from season to season.

The Court: What about the Easter period?

The Witness: This would also be an extremely good week or several weeks.

The Court: Is that as good as Thanksgiving?

The Witness: I am not sure about the relationship—I would think that Easter is probably the better of the two.

By Mr. Christensen:

Q. Now, does Jewel, in the regular course of its business, keep statistics on the operation of each store as to its volume of meat sales, its volume of grocery sales, its meat department or market department payroll, its grocery store payroll—those are regular statistics kept by your company, are they?

A. Yes, they keep each of these statistics regularly.

218 Q. Are those available and do you have with you sheets taken from transcripts from the company's records of the company's experience in those regards chainwide?

A. Yes, sir, I do.

Q. Do you also have work sheets with you showing the performance of these nine stores on which you could find a one year period before and after night operations?

A. Yes, I have them personally.

Q. Are the performance of those particular stores the same, with respect to the same factors I have just inquired of you, sir, that you have as to the company generally?

A. Yes.

Q. Now, will you explain to Mr. Dunau how you made this study to determine how these nine stores performed as against the company?

A. I was able to find of which group of which of our stores were not able to sell meat at night, and then were granted the privilege by some union negotiation of one sort or another, and other stores, several stores, in which

we had a small meat operation where we expanded it;  
219 I was able to find statistics on before we had the privilege of selling meat at night, and compared those same statistics with those of the same year—I should say for the one year after they were granted the privilege, and was able to compare the two years.

Q. All right, now, will you produce the work sheets

showing the performance of these nine stores? Will you produce your tabulations of what those nine stores did?

A. Well, I have the effect on market sales, the effect on total sales, and the effect of stores earnings, and I can compare it for the one year before and after.

Mr. Christensen: I think we can save time if counsel wanted to look at these, because there are some of them that he may insist we put into evidence, and then others he may wish to waive. I will furnish them all to him to study over night, and they all go ultimately to qualifying this exhibit that counsel takes offense to before I have done a blessed thing about it.

220 The Court: I think that is a good suggestion.

Mr. Dunau: Yes, your Honor, I quite agree.

221 (Thereupon the trial of the above-entitled cause was adjourned to Thursday, October 25, 1962; at the hour of 10:00 o'clock a. m.)

223

*Direct Examination (Continued).*

Q. Mr. Brodnicki, are you the same Mr. Brodnicki who was on this stand when we adjourned last night?

A. Yes, sir.

Q. You are that same person, are you not?

A. Yes.

Q. Now, did you, after adjournment last night, discuss with counsel for the defendants your working papers by which you made a comparison of the performances of the stores that had either not been selling meat at night at all, or had increased their hours of sale of meat at night as against the change when no meat was sold at night?

A. Yes, I did discuss it with the defendants very briefly.

Q. Did you deliver to counsel a set of your basic working papers?

A. I believe somebody had done it.

Q. Will you explain to the Court why you were able to find only nine such stores that were statistically valid out of the entire Jewel chain?

A. Currently there are thirty-three stores which have the privilege of selling meat at night, and of this group I found that the majority did not have any changes in this opportunity to sell meat. In other words, once they opened their doors, they had the right to sell meat to begin with, so there was no change—so there was no before and after situation.

Also there were nine stores of the thirty-three in which we could trace the extent of the sales and other indicators as what change, in selling meat, that it takes to have on a store's operation, so of those nine stores there were enough stores in which there was a length of time necessary enough to measure the before and after situation.

226 Q. Now, you have testified that you found two stores in Aurora, one in Geneva, one in Elgin, two in Joliet, one in Hammond, one in Whiting, and one in Michigan City, is that not correct?

A. That is correct.

Q. Now, in your working papers, which one of those stores comes first?

A. In the period of time?

Q. Well, no, just in the heading?

A. No. 15, at Aurora.

Q. And as to 15, at Aurora, will you tell in detail what records you went to and what computations you made with respect to No. 15 at Aurora?



A. At this particular store, by contract agreement on January 1, 1958, we began to sell meat at night. We had not been selling meat at all, and I believe it went to a Thursday and Friday opening after that.

We maintain a stores operating record for each of our stores, and for Store 15 at Aurora, which is based on 227 a 4-week accounting period, and it contains such information as market sales, total sales, market payroll, total payroll, and the earnings of the store. This is a record—I would call it an original record. Well, in fact, it is the original record of the profit and loss statement of this particular store for each of the four weeks in which we have ever done business in this store, so I went back to one year before the start and pulled each of the thirteen accounting statements and developed this information.

Q. Did you then get a total figure for that store for the year 1957 as to the total market sales of the store?

A. Yes, I did.

Q. And the market payroll for the same period and the total payroll for the same period?

A. Yes, I did.

Q. And did you then compute the percentage of the market payroll to market sales for each of those thirteen accounting periods in that year?

A. Yes.

228 Q. And you computed the payroll to the total sales for each of the accounting periods?

A. Yes.

Q. Did you get, from your records, the earnings of the store for each period—the total earnings?

A. The total earnings, that was done, yes, and that is in the last column.

Q. And, now, did you follow the same procedure as to the succeeding year of 1958, sir, after the permission to sell meats after 6:00 P. M. had been given?

A. Yes, that was done also.

229 Q. Then you totaled up all of those items for that store?

A. That's right.

Q. Now, what comparison, and how did you arrive at a comparison of that performance of Store 15 in Aurora against the performance of the total chain?

A. I went through an identical computation which came off the company records of the total of all sales. All market of sales and all earnings which would include the figures for all of the stores. It is primarily a recap of each of the existing stores at that time, and I performed the same arithmetic calculations by each of their accounting periods.

Q. Now, in some of the nine stores did you use some period other than the total year 1957 and the total year 1958?

A. Yes. Of the nine stores there were actually four different dates in which these privileges were granted, and there would be four different dates involved. I could give you those.

Q. So that you took a year before the change and a year after the change?

A. That's right.

230 Q. And you compared it with a comparable period?

A. The year preceding and the year after.

Q. In the company's total experience?

A. Yes.

Q. Now, from that did you develop the figures . . . which are reflected on Plaintiff's Exhibit 13 for identification?

A. Yes, sir.

Q. That consolidates the averages of the nine stores in which you were able to make this study against the total chain performance for a comparable year?

A. That's right.

Q. Now, the nine stores in which the study could be made showed meat sales before evening permission was granted of how much?

A. \$9,667.00 per week per store.

231 Q. And in the year after night sales were permitted how did the meat sales run?

A. They were \$11,505.00.

Q. That was an increase of how much, percentagewise?

A. Oh, 19 per cent.

Q. At the same time what had the company's total increase in meat sales been?

A. 6.8 per cent.

Q. Now, on the nine stores what were the total sales of the stores of groceries, meat and produce?

A. \$31,381—

Q. Just a second. Before they could sell meat at night?

A. Before it was \$31,381.00.

Q. And afterwards it rose to?

A. \$36,618.00.

Q. And that was a percentage increase of?

A. 16.7 per cent.

Q. Whereas the company as a whole showed an increase of only 4.9 per cent, is that correct?

A. That's right.

Q. Was there a change in the percentage of meat  
232 sales to total sales in the nine stores—

A. Yes, sir.

Q. (Continuing.) —after permission for night sales was granted?

A. Yes, there was.

Q. And what did that amount to?

A. It showed that meat sales increased .6 of one per cent compared to total sales.

Q. And what has been the company performance in the same comparable period?

A. They went up .5 of one per cent.

Q. Now, on payroll what was the total store payroll average for the nine stores per week before night sales were permitted?

A. \$2,059.00.

Q. After night sales were permitted did that figure rise?

A. Yes, to \$2,461.00.

Q. So that the payroll went up 19.5 per cent?

A. That's right.

Q. And in the chain as a whole it went up only 7.9 per cent?

233 A. That's right.

Q. What was the effect upon store earnings?

A. They increased in the nine stores.

Q. From \$1,315.00 a week to \$1,618.00 per week, am I correct—

A. That's right.

Q. (Continuing.) —as I read your chart, which was an increase of 23.1 per cent?

A. That's right.

Q. Whereas the entire chain had increased only 7.7 per cent?

A. That's right.

Q. Mr. Brodnicki, in taking a total company performance did you exclude from total company performance any stores whatsoever?

A. No, that would be the full effect of all stores in the chain.

Q. Including the nine?

A. Yes, sir.

Q. So that to a degree these figures are weighted against our contentions. That is, these better performances 234 are also reflected in these figures, is that not correct?

A. That's right.

Mr. Christensen: I will offer Plaintiff's Exhibit 13 in evidence. If counsel wishes me to put in evidence anything any of the supporting data I will be happy to do so. It is very voluminous.

Mr. Dunau: If your Honor please, before we take a position on the admissibility of this exhibit, may I examine the witness here on this?

The Court: You may.

Q. Mr. Brodnicki, how old are you, sir?

A. 31.

Q. You took a degree at the University of Illinois?

A. Yes, sir.

Q. What was that degree?

A. Business administration.

Q. Did that give you a Bachelor's in business administration?

A. Bachelor's degree, that's right.

Q. After four years of study?

A. Correct.

Q. You also indicated you had further studies after you got your Bachelor's at the University of Illinois, is that correct, sir?

A. That's right.

Q. What additional courses did you have?

A. I took on some additional courses at the LaSalle University of Accounting.

Q. These courses were accounting courses?

237 A. It was a CPA review course, is the title of the course.

Q. And this further study was in preparation for passing an examination to be admitted as a Certified Public Accountant, sir?

A. That's right.

Q. In the course of your studies at the University of Illinois, did you take any course in statistics?

A. Yes, I did.

Q. How much study did you take in statistics, sir?

A. One course.

Q. Was that a half-year course, sir?

A. Yes.

Q. And how many hours?

A. It was a 3-hour course.

Q. Your total study of statistics, then, is—I take it this was an elementary course?

238 A. Yes.

Q. Then your total studies of statistics was three hours of an elementary course in statistics at the University of Illinois, is that correct, sir?

A. That's correct.

Q. Have you ever worked as a statistician, sir?

A. Yes, I have.

Q. In what way?

A. I had a job while I was working at the University of Illinois while I was attending school at the University of Illinois for a Dr. Osgood, who was writing some articles in—was a Professor of Psychology, and he hired me to be a statistician to help write some of these articles.

Q. What did you do as a statistician for this doctor?

A. It was accumulating data. I am trying to recall the exact techniques or words, the scientific names of it.

Well, I primarily accumulated and worked with a gentle



man who was obtaining information from electronics  
239 research, and I was compiling information for his  
articles.

I would like to add some statistical words to this. There  
were all kinds of averages and norms and means and  
those sorts of things.

Q. Where you provided with the basic data, sir?

A. Yes.

Q. And then what did you do with this basic data?

A. Accumulated it, interpreted it.

Q. What does it mean when you say you "accumulated"  
the data, sir?

A. Primarily add, multiply and divide, perform these  
arithmetic computations to come to the end product.

Q. When you were doing arithmetic, is that it?

A. Part of it was arithmetic.

Q. What other part was not, sir?

A. Well, when you use statistical tools like averages  
and norms and means, the end result is adding and sub-  
tracting these figures. But you have to know how to use  
these.

240 I cannot explain what part is arithmetic and what  
isn't.

Q. Your familiarity with the science comes from an  
elementary course for three hours for a half a year, is  
that correct, sir?

A. That's right.

Q. With respect to this study which has been offered  
in evidence, who asked you to make this study, sir?

A. It came to my superior, Mr. Larson.

241 Q. What did he tell you when he asked you to  
make this study?

A. He asked me if I could look through our company  
records to find any significance in the stores which have  
sold meat at night, to determine what the effect of selling  
meat in our stores is.

Q. Did he instruct you what to look for, sir?

A. To tell the truth, he really was rather vague, didn't know which stores were involved, and he said, "Jim, why don't you take the whole area and survey our records and see what is available, and I will give you whatever help is necessary to accumulate this information."

Q. From that point on, did you work on your own in preparing this study?

A. I would say about 90 per cent was on my own.

I asked a few other questions of people, various phases of it with our Division Managers and some of the other people who have a better knowledge of some of the information, to be sure I didn't have any misstatements of fact in my work.

242 Q. Well, then, this help you got from the others was to be sure that the figures that you have on these work sheets are correct?

A. In most part; yes, sir.

Q. In most part, yes, sir, did you say?

A. Yes, sir.

Q. Did you submit this study, after you had completed it, to a superior?

A. Could you repeat that?

Q. Did you submit this study, after you completed it, to a superior?

A. Yes.

Q. Who?

A. Mr. Larson, was my superior.

Q. Did he go over this study with you?

A. Briefly.

Q. Did he attempt to discuss with you the premises upon which this study was based?

A. He asked questions of the various phases of it, what I had covered and what I had done.

Q. Does this study represent your own end judgment, Mr. Brodnicki?

243

A. Yes, sir.

Q. Did you consult with an outside statistician to determine whether the premises upon which you made this study were valid?

A. No, I didn't.

Q. Is Mr. Larson a statistician?

A. An accountant.

Q. But not a statistician?

A. No, sir.

Q. When you made this study, were you told the purpose for which it was to be made?

A. Yes, sir.

Q. What were you told, sir?

A. I was told that Jewel wanted some information and, in fact, it would be used in connection with a Court case, and I was told that we wanted to know if there was any significance in selling meat at night.

Q. Were you told when you were asked to make this study, that it would be helpful to Jewel to show that it made a difference if there were meat operating differ-  
244 ences at night?

A. No.

Q. You were not told that?

A. No.

Q. You stated, Mr. Brodnicki, that with respect to the store at Aurora, 15-Aurora, which is Item A-1, that for the period of 1957 there were no night operations, and then, by agreement with the Union, Jewel was granted the privilege of operating nights in 1958.

Am I correctly stating what you said, sir?

A. I believe that is right.

Q. How do you know that there was an agreement in 1958, which granted market operating hours to Aurora?

A. I'm sorry, would you repeat that, sir?

Q. How do you know that there was an agreement in 1958, which granted market operating hours to Aurora?

A. I obtained this from the contract and also Mr. Vorbeck.

Q. What contract did you look at, sir?

A. I don't recall the exact number of the agreement.

Q. Do you know whether this was an agreement with Local Union No. 189, sir?

245 A. I believe it was.

Q. Do you know whether the Aurora store is in a group other than Group 1 in Local 189, sir?

A. No, I don't.

Q. You do not?

A. I do not know that.

Q. Do you know for what period of time there has been night operations permitted by agreement in groups other than Local 1?

A. Of this Local 181?

Q. Of Local 189, sir?

A. No, I don't know on that.

Q. When you say, therefore, that in 1957, night operation was not authorized in the Aurora store because of the agreement with Local 189, you are purely on the basis of hearsay information, sir?

A. If you call hearsay information getting it from a Division Manager, then I guess it is hearsay.

Q. Well, I think that constitutes hearsay.

Mr. Brodnicki, if you look at the first page of this study, PWPS appears at the top. Does that mean per week per store, sir?

246 A. That's right.

Q. In the next column it says "Per cent increase or decrease from base," the abbreviation DEC is in parenthesis.

Does that mean that at every other point in the study where a parenthesis occurs, it shows a decrease, rather than an increase?

A. I believe you are right, sir.

Q. Would you please turn to Item A-1, dealing with 515, Geneva and 368, Elgin?

Now, the figures under Sales, PWPS, per week per store, for market and total, those figures pertain, do they, sir, to each week, an average of the four weeks in the first quarter, for example, in 1957?

A. That is correct.

247 Q. When we go to the third and fourth columns, which says, "Payroll dollars market", and then "Payroll dollars total", is that per week, per store?

A. Well, the percentages—the percentage isn't necessarily per week per store. It could be either a weekly period or a yearly, and—

Q. (Interposing.)

No, I am not looking at the moment, Mr. Brodnicki, at the fifth column, which says, "Market payroll percentage, market sales", but at the moment I am confining myself to the third and fourth columns, which have the total in them.

Q. Now, with respect to those totals, is that per week per store?

A. No, that is the four week figure.

Q. So that in the first two columns we have a weekly figure, and then in the third and fourth columns, we have a monthly figure, is that it?

A. Well, a four weeks figure, that is correct.

Q. And in the next column, which has the percentage, we cannot ascertain that percentage, can we, from the figure in the first four columns, can we, sir?

248 A. Yes, sir.

Q. Will you please describe how that could be done?

A. If you were to divide the four week figure, into the one week figure, you can then equate your sales and payroll.

Q. In order to get per week, per store in columns three and four, we have to divide the figure by four, is that correct?

A. That is right.

Q. And then we would get the percentage which appears in column five?

A. That is correct.

249 Q. Now, in the seventh column, you have "Earnings per period", and where did you acquire the figure of "Earnings per period"?

A. From our company records.

Q. And what do those records consist of, sir?

A. Well, we maintain a stores operating record for each of our stores for a four-week period, and those figures come up with these period records.

Q. Then in determining the earnings for each of these periods from your company records, what items of cost go in?

A. Every item of cost.

Q. Will you describe them or list them, please.

A. Federal income tax, payroll, supplies, telephone and telegraph, transportation expense, administration charges, advertising, promotion expense, supplies and maintenance expense.

Q. If any of those items will come down in cost, you will show an increase in earnings, would you not?

A. That is correct.

Q. You would show an increase in earnings if they went down even if you have the same volume of 250 sales in either the market or the grocery department, is that not correct, sir?

A. Would you repeat that question?

Q. The earnings would be increased even though you had the same volume of sales, if the cost of the other items which you have listed, had gone down during that period?



A. That is right.

Q. Now, on this same sheet, under 515 Geneva, on the extreme lefthand side, you have a notation showing "before no nights, after six nights."

Is that an error when you say "after six nights"?

A. I don't believe so.

Q. Mr. Brodnicki, would you please look at page 2 of the last group of pages, with the store 515 Geneva, sir, at the top of the page?

A. Yes, sir.

Q. Now, would you look under the column which says "Store hours, grocery"?

A. Yes.

Q. Does that state "9:00 a.m. to 9:00 p.m., Monday through Friday"?

251 A. Yes, it does.

Q. It does?

A. Yes.

Mr. Christensen: What sheet are you looking at?

Mr. Dunau: This one here.

Mr. Christensen: All right.

By Mr. Dunau:

Q. Does that state "9:00 a.m. to 9:00 p.m., Monday through Friday"?

A. Yes.

Q. And "9:00 a.m. to 6:00 p.m. Saturday"?

A. That is correct.

Q. And the next column, does it state "Store hours, market, a. m. to p. m.", the same as grocery?

A. That is correct.

Q. Then you have in the "market," according to your page 2, market operating hours of 9:00 a. m. to 9:00 p. m., Monday through Friday, is that not correct?

A. That is correct.

Q. And that comes out to five days, does it not?

A. You are right.

252 Q. So that the notation of "six nights" under 515 Geneva, is in error, isn't that correct?

A. I believe you are right, and it should be five nights.

Q. That should be five nights, isn't that right?

A. Yes, sir.

Q. Now, under the same item, A-1, under the store 368 Elgin, appears the notation "six nights", in the margin beside the numerals in the first column of figures, and is that also an error?

. . . . .

By the Witness:

A. I believe you are right. There was only five nights this store was open.

By Mr. Dunau:

Q. That should be five nights, as well?

A. Yes.

Q. At the top of that page, on the extreme top on the lefthand side, you show two asterisks on the page numbered 253 titled A-1, 515 Geneva, 368 Elgin, and do you see that, sir?

A. Yes, sir.

Q. What do those two asterisks signify?

A. I believe it is used to facilitate copying these work sheets. It looks like the handwriting of my girl.

Q. Those asterisks have no significance in this study or to this study, is that correct?

A. No, sir.

Q. Now, would you turn to item A-2, in which you list the stores 341, Joliet, and 1161, Joliet?

A. Yes.

Q. Now, you will note that on the lefthand margin, deal-

ing with 341 at Joliet, sir, you have marked "six nights", and is that an error?

A. I believe that should be five nights.

Q. Would you check on your own notes to be sure?

A. Yes.

Q. All right, now, I see no notations in the margin to the left of the first column of numerals, dealing with 1161, Joliet, and does that mean that the hours which are listed on the left or to the left of 341, Joliet, apply also to 1161, Joliet?

254 A. They are included too.

Q. They do apply?

A. Yes, sir.

Q. Now, would you take a look at item A-1, 15, Aurora, and 950, Aurora.

A. Yes.

Q. The notation on the left margin showing "market operating hours" for 15 at Aurora—15, Aurora, has no counterpart for 950, Aurora, and does that mean that the same market hours prevail with respect to 950, at Aurora, as to 15, Aurora?

A. Yes.

Q. May I ask you, sir, the numerals 950 and 1161, and others which appear opposite the location of the store, are those company designations to identify the store?

A. That is correct.

Q. They have no other significance? In other words, it is not a street number?

A. It would be the street number also, yes.

Q. I see, you identify the store by the street number, is that correct?

A. That is correct, but the street name is left out.

255 Q. Now, will you please take a look at item A-3, dealing with 7240, Hammond, and 1755, Whiting.

A. Yes.

Q. Again, you have, on the lefthand margin, beside the numeral pertaining to 7240, Hammond, a list of market operating hours, but no comparable listing in the margin pertaining to 1755, Whiting.

Does the same hours pertain to 1755, Whiting, as to 7240, Hammond?

A. Yes, they do.

Q. Where did you obtain the information, Mr. Brodnicki, with respect to the hours of operation which prevailed at each of your nine stores before there was a change in the hours which prevailed after there was a change?

A. In general or specific cases?

Q. You just tell me the general way in which you acquired that information.

A. Well, for Michigan City I obtained this—this letter from the manager who had gone back through the records of this store, and he told me the dates on which those changes took place.

256 In this particular instance, the one you just asked me about, at Hammond and Whiting, at those stores, I had gotten a letter in correspondence from Mr. Morse, the vice president, authorizing the store to be opened.

This was an after effect because he said that these stores would expand their hours on this particular night.

Now, the other instance that I referred to, of these four stores I referred to, of the four stores I referred to a legal opinion from contracts.

Q. Which four stores did you look for a legal opinion for contracts?

A. Well, I didn't—I did not look at them myself. I obtained it from, as you say, hearsay from Mr. Vorbeck. Those were the first four stores in this study.

Q. Can you identify them by name, the first four stores in this study?

A. 15 Aurora, 950 Aurora, 515 Geneva, and 368 Elgin.

Q. And with respect to those four stores, you obtained your information from Mr. Vorbeck?

257 A. I might have a copy in my work sheets. I have a lot of contracts, and I can't say for sure—I know in the original records that I have, I do have the contracts, and I am not sure on this point whether I got it from him or actually looked it up myself.

Q. Well, how do you ascertain market operating hours from contracts where the contract permitted market operations in the evening at the employer's discretion?

A. I did not understand that.

Q. The agreement, in Local 189, other than Group 1, permits a determination of market operating hours to the employer's discretion, does that not?

A. I am sure I don't know or I don't understand your question.

Q. What do the agreements, with Local 189, in group other than 1, provide with respect to market operating hours?

Mr. Christensen: I am going to object to that. We will produce the contract.

The Court: The contract would be the best.

261 Q. Mr. Brodnicki, do you remember what the agreement with Local 189, outside of Group 1, provided with respect to market operating hours in Aurora?

A. I don't believe.

Q. You do not know, is that your answer, sir?

A. I couldn't state it specifically.

Q. You do not now know?

A. I couldn't quote the words.

Mr. Christensen: You have a copy, the Court one. It is all right with us if you want to show it.

The Court: Well, is this a duplicate of the other one?

Mr. Christensen: No, this is not a duplicate.

The Witness: I think I could clear up the whole situation

Mr. Dunau: This is what I can't represent. I don't know, your Honor. So there is hardly any point in giving the man a 1961 agreement unless I am also able to 262 represent it was the same at a previous period.

The Witness: To clear it up, we do publish a list of store hours periodically, approximately every year. And in 1957, we had one set of hours and in 1958, another set of hours, so there is no question about the fact the hours changed.

I have seen those reports, which I would be certain are correct. It is a question of the date in which that change occurred, and so I was trying to pick up the date very accurately, on these work papers, but I do know a change took place from those records.

By Mr. Dunau:

Q. Well, of course, assuming when you ascertained when a change took place at a particular date that the change was attributable to a change in the agreement.

A. I was really interested in the change of hours. That was my purpose.

Q. Please answer the question. Did you assume 263 that when you ascertained that a change took place that the change was a consequence of a change in the collective bargaining agreement?

A. I had felt there was some change in the contract.

Q. This is your feeling with respect to the matter?

A. Yes.

264 Q. Mr. Brodnicki, with respect to 15 Aurora, the change that took place, according to your record, Item A-1, on January 1, 1958, is that correct, sir?

A. Yes.



Q. Do you know whether a change in agreement took place on January 1, 1958?

A. I couldn't say for sure.

266 Q. Mr. Brodnicki, you stated, not to belabor this point too much, that you got some of your information from Mr. Morse, is that correct, sir?

A. A documentary letter he had written.

Q. He had written a letter setting forth market operating changes, sir?

A. The letter stated that on a specific date—that was about a week after he had written this—that these hours had changed, and he asked some questions about the effect of these changes. There is a memo dated back in 1957, I believe.

Q. And to whom was this letter addressed?

A. I believe to Mr. Ohm, our treasurer, or Mr. Larson.

Q. Mr. Morse was asking for information as to 267 hours changes in this letter, sir?

A. No, he stated there had been a change of hours.

Q. Where did he acquire his information?

A. He is vice-president in charge of stores. I presume he had a pretty good knowledge of the subject.

268 Q. If he was vice president I assume he had his information from what somebody told him?

A. Well, he was out there and saw the change:

Q. Or that.

Would you turn, Mr. Brodnicki, to Item A. Recap. would you please tell me whether, taking 15 Aurora on the first line, that the information along the first line pertaining to 15 Aurora is the same information which appears on the last line of Item A-1, under 1957, pertaining to Aurora, 15 Aurora?

A. Yes, sir.

Q. It is, sir.

A. Yes, sir.

Q. And that is true with respect to the remainder of the nine stores listed on Item A-1, is that correct?

A. Yes.

Q. Now, let's take a look, Mr. Brodnicki, at Item B-1, which is entitled "Company Recap, Jewel Food Stores."

Do you have it, sir?

269 A. Yes, I do.

Q. Now, as I look at Item B-1, you have a listing for 1954 to 1955, and then below that a listing for 1955 to 1956.

Does this pertain to the same hour changes which you have listed under Item A-2 for 341 Joliet, and 1161 Joliet?

A. It appears to be, yes, sir.

Q. It is, sir?

A. Yes, sir.

Q. When you have "Company recap, Jewel Food Stores," are you including all stores operated by Jewel Tea Company as of this period?

A. Yes, sir.

Q. Do you know when the Eisner, E-i-s-n-e-r, chain of stores was acquired by Jewel Tea Company?

A. I believe about four years ago.

Q. That would make it 1958, is that correct, sir?

A. Yes, sir.

Q. Now, taking a look at Item B-2 and B-3, which covers 1958, do those figures include the Eisner chains op-  
270 erated by Jewel Tea?

A. No, sir.

Q. They do not?

A. No, sir.

Q. Then excluded from these figures are the Eisner chain?

A. That is correct.

Q. All other stores are included, is that correct?

A. That is correct.

Q. Now, would you please look at Item B-1, and on the last column it says "Store Weeks," and then there are numbers under that.

Would you tell me what those are?

A. Store weeks are the term which would tell you how many Jewel stores were open in a given week, times the number of weeks. I could best describe it by an example:

If we had one hundred stores that were open for a four week period, this would be four hundred store weeks.

Q. I see. So that if I divided 669 by 4, I would come up with what?

271 A. Approximately 150—about 153 stores.

Q. That would mean there were 153 stores covered as of the 11th period of 1954, is that correct?

A. Actually, my division is wrong. It is a few more.

Q. Apart from the accuracy of your arithmetic—

A. That's right.

Q. (Continuing.) —dividing store weeks by four, gives you the number of stores covered by the compilation?

A. That is correct.

Mr. Christensen: May I ask: If the store is opened in the middle of the period, and is reflected only for two weeks, it will show up in this total, but you can't divide the total by four in all cases, can you?

Your accounting period stands on entire months, and you open a store in the middle of the month.

The Witness: It would be in there for those weeks you have it open.

272 Mr. Christensen: Four weeks is not always divisible by four.

By Mr. Dunan:

Q. You might in that case, I take it, get 150½ stores?

A. That is correct.

Mr. Christensen: Whatever it may be, depending on opening and closing of stores.

Mr. Dunau: All right.

By Mr. Dunau:

Q. Now, Item B-1, then, as I understand it, pertains to the total company experience during the same period of time as your Item A-2, pertaining to 341 Joliet and 1161 Joliet pertains?

A. That's right.

Q. Your Item B-2 pertains to the same period for all Jewel stores that are covered by 15 Aurora, 950 Aurora, 515 Geneva, and 368 Elgin, is that correct, sir?

A. Yes, sir.

Q. And your Item B-3, which is a compilation of all stores, corresponds to the same period covered by 7240 Hammond and 1755 Whiting, is that correct?

273. A. That is correct.

Q. And your Item B-4—I am sorry—no, that's right—your Item B-4 pertains to the same period of time as is covered by Item A-4 or all company stores—I am sorry, let me repeat that.

Your Item B-4 pertains to all company stores corresponding to the same period covered by 2601 at Michigan City on A-4, is that correct?

A. That is correct.

Q. Now, looking at Item B recap, sir:

Confining ourselves for a moment to 341 Store, years 1954 to 1955, on the first line, does your item on the first line pertaining to 341, 1954-1955, correspond with your summary item under B-1 for the same period of time?

A. Yes, sir.

Q. And the same would be true with respect to the rest—

A. That's right.

Q. (Continuing.) of the stores listed on the Item B recap, is that correct?

A. Yes, sir.

274 Q. Now, your last two sheets identify for you thirty-three stores in which night operation appears—exists, I should say.

A. Yes, sir.

Q. And of those thirty-three stores you selected the nine?

A. That's right.

Q. All right, Mr. Brodnicki, let's go forward.

In comparing a year before a change was made with a year after a change was made, did you take into consideration whether there was an increase in the cost of meat in the second year?

A. No, sir.

Q. Did you take into consideration whether there was an increase in the cost of grocery products in the second year?

A. No, sir.

Q. In determining the labor costs for the second year did you take into consideration whether there had been an increase in the wage in the second year?

A. No, sir.

Q. In computing the cost, labor cost, for the second 275 year, did you take into consideration premium paid to butchers for working at night?

A. Insofar as those figures are reflected in the total payrolls for the stores, yes.

Q. But you did not segregate the premium pay from the regular straight time pay?

A. No, sir.

Q. Now, in comparing the before and after, did you take into account whether the second year after the change had been made there had been a growth in population in the community in which that store operated?

A. No, sir.

Q. Did you take into consideration whether the character of the neighborhood had changed in the second year?

A. No.

Q. What is your answer, sir?

A. No.

Q. Did you take into consideration whether in that neighborhood Jewel had closed one of its own stores?

A. I don't believe any had closed, but I—

276 Q. Yes; did you take that into consideration? Did you inquire as to whether any of the stores had closed?

A. Yes.

Q. You did inquire?

A. Yes.

Q. And what did you find out?

A. There were no store closings in these communities.

Q. During the second year of the change?

A. During any of the period before and after.

Mr. Christensen: May I ask: Is that answer restricted to the nine?

The Witness: Yes, sir.

By Mr. Dunau:

Q. Where did you get this information from, sir?

A. Well, we have records—I got it from my own information of records of stores which are open and my awareness of stores in these communities. I know from my own knowledge of these stores.

Q. Oh, you have personal knowledge with respect to these nine stores, sir, and the neighborhoods in which  
277 these nine stores operate?

A. I have driven through most of these communities. I am aware of sales figures that come in from the stores.

Q. And your information is gained from driving through the communities?



A. Talking to merchants?

Q. Talking to Merchants?

A. Yes.

Q. All right, sir. Did you determine whether in the second year of comparison a particular one of the nine stores had been physically enlarged?

A. No, sir.

278 Q. Did you inquire as to whether any of these stores in the second year of the comparison had been converted from a self-service market—from a service market to a self-service market?

A. Yes, sir.

Q. You made such an inquiry?

A. Yes, sir.

Q. Do you find whether any such store had been converted?

A. Not during this time period.

Q. Did you say that during this time period no store for the second year of operation had been converted from a service to a self-service market; is that your answer?

A. Yes.

Q. Now, Mr. Brodnicki, please look at Recap A, which pertains to the nine stores which you are using as the basis for a comparative study.

Do you have that before you, sir?

A. Yes, I do.

Q. Now, would you look at the fourth column?

279 Does that show that there was a 23.2 per cent increase in the labor costs for the nine stores?

A. Before or after?

Q. That there had been a 23.2 per cent increase in costs in the second year, as compared with the first year?

A. That's correct.

Q. Did you inquire as to what accounted for that increase in the labor cost?

A. No, sir.

Q. Is part of the increase attributable to paying butchers for working at night?

A. I am sure it is.

Q. Now your Item B Recap, sir, on the top line pertaining to 1954 to 1955, all stores, you show an average earnings—and this is for a week period, is it, Mr. Brodnicki?

A. This is for a 4-week period.

Q. A 4-week period.

(Continuing.) —of \$3,383, is that correct?

A. That is correct.

280 Q. And then on the last line, for 1961, to 1962, you show that all stores, for all stores, that the average earnings had increased to \$5,436, is that correct, sir?

A. This is \$5,588.

Q. No, that is—you are looking at 1960 to 1961. Will you please look down here (indicating)? That is the latest figure you have, is it not?

A. You are correct.

Mr. Christensen: Which figure are you talking about?

Mr. Dunau: The first figure, \$3,383, is on the first line, on Item B Recap.

The last figure appears on the last line prior to the company average of—

Mr. Christensen: You are quite mistaken; that is Store No. 2601. That's not the last line.

Your last line is—this is the store, here. It is—

281 Q. Mr. Brodnicki, does Item B Recap pertain to all stores of the Jewel Tea Company?

A. Yes, sir.

Q. Does the last item which I have read, 1961-62, \$5,436, pertain to all stores of the Jewel Tea Company?

A. The \$5,436 for that time period does include all stores.

Q. All stores?

282 A. Yes.

Q. And the first figure I have mentioned to you, \$3,383, pertains to all stores, does it not, sir?

A. Yes, sir.

Q. Can you account for an increase in the earnings from 1954 to 1962 for all stores?

What happened to increase the earnings for all stores?

A. Well, sir, that is a very complex answer dealing with our expenses and our gross margins and our sales. It would take quite a lengthy answer to explain that.

286 Q. Now, Mr. Brodnicki, let us look at Item B recap, and Item A recap.

Do you have those?

A. Yes, I do.

Q. I don't know, I don't want to disarrange your file, but it might be better to pull it out so you can look at both at the same time.

A. Good idea.

Q. Now take a look at Item B recap, sir. The second group is the after group. Do you see that?

A. On the B?

Q. On the B, yes.

A. This one?

Q. That's right. Do you see that?

A. Yes.

Q. Now, would you look at the 7 and 8 lines of that after group. It says:

"1956 to 1957"?

A. Yes.

Q. Is that an error?

A. No, sir.

287 It is not an error?

A. No, sir.

Q. Would you please—well, before we go to that, on the “before” you have under the 7 and 8 lines the same period, 1956 to 1957?

A. Yes, sir.

Q. Well, you couldn't very well be comparing the same period if you have a before and after, could you?

A. I don't understand.

Q. Shouldn't that be 1957 to 1958, in the second group, after?

A. Yes, line 7 and line 8 should show the year previous above in the chart.

Q. So that the line 7 and 8 in the after group should appear as 1957 to 1958, rather than 1956 to 1957, is that correct?

A. The years in the top portion should be corresponding to Exhibit B-3, which should be 1956 and '57, which is right.

In the year later, in the line 7 and 8 below it should be years 1957 and '58.

Q. So that we should change for lines 7 and 8 in 288 the after group, we should change from 1956-57 to 1957-58, is that correct?

A. Yes. The figures are right, but the caption should be changed.

Q. The figures are right but the years that you assigned are wrong?

A. That's right.

Q. Now an Item B recap, this pertains, looking at the after figures from 1955 to 1956, shows an average performance for all stores of \$4,776.00, average earnings?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Now look at Item A recap for the 15-Aurora store for the same era.

That shows average earnings of \$5,024.00, is that correct?

A. The which Aurora store, sir?

Q. 15-Aurora.

Look at your Item A recap.

289 Mr. Christensen: That is not the same time period.

By the Witness:

A. Yes, sir.

By Mr. Dunau:

Q. That shows \$5,024.00 for the 15-Aurora store, is that correct?

A. \$5,057.00, unless I am looking at the wrong figure. \$5,157.00.

Q. Look at the recap, sir. Item A recap?

A. Yes, sir.

Q. 15-Aurora, \$5,024.00, is that right?

A. Yes, sir.

Q. All right. Now that is the same period of time that the average performance for all stores was \$4,776.00, is that correct?

A. That's right.

Q. All right. Now can you account for the difference between the approximately \$275.00 greater earnings in the 15-Aurora store, from the average, in detail? Just account for it, sir. Can you?

A. It is a complex figure made up of salaries and other expenses.

290 Q. Why was the 15-Aurora store earnings more on the average than all other Jewel stores during the same period?

Mr. Christensen: Now the figures don't show that. The figures don't show that at all.

Mr. Dunau: The witness has just testified that for the same period of time—

Mr. Christensen: He has testified nothing of the kind.

He has testified what Aurora earned and what the total Jewel average was. He did not say Aurora made more than all other Jewel stores, which is what your question says.

Mr. Dunau: The question was did it earn more than the average.

Mr. Christensen: You misspoke yourself.

Mr. Dunau: If I omitted the word "average" I misspoke.

The Court: All right, proceed.

By the Witness:

A. Yes, it did.

291 By Mr. Dunau:

Q. It did?

A. Yes.

Q. All right. Now, can you account for us the reason why the 15-Aurora store earned more than the average of all other stores?

A. Again it is a complex answer affecting gross margins, and expenses. It would have to be an analysis of just that one question. I presume it could be done.

Q. It is not as a result of night marketing hours, is that correct?

A. I don't understand what your question is—

Q. Is the reason that the 15-Aurora store earned more than the average of the Jewel stores the fact that for the second period they were operating at night?

Mr. Christensen: The sole reason, is that your question?

By Mr. Dunau:

Q. Is a reason?

A. I believe this is a factor, yes.

292 Q. You believe that a factor in showing that the 15-Aurora store earned more than the Jewel average



is that you had night authorizations in the 15-Aurora store, is that your answer?

A. Yes.

Q. Let's go to the 450-Aurora store.

A. 950.

Q. 950-Aurora, I am sorry.

Does the total Jewel performance, the average for each store, show \$4,776.00 in Item B recap?

A. Yes, sir.

Q. Does it show for 950-Aurora, that it is \$4,750.00?

A. Yes, sir.

Q. I make that out to be \$26.00 less than the average performance of all Jewel stores?

A. You are correct.

Q. Why didn't night operation in the 950-Aurora store bring in above the average for all Jewel stores?

A. Again this is just one factor, operating, and I think there are other factors that affect the profitability of the store.

Q. So the fact that it is less profitable than the 293 others is not true, or is it due to night marketing operations?

A. Well possibly the store could even have been less profitable if a night operation was in this.

Q. So that if you had no night operation you are telling me that the store would have been even worse off, is that it?

A. These figures tend to indicate that.

Q. I see. Now let's go to 515-Geneva.

That shows that the average earnings on that store were \$12,964.00, against an average performance of \$5,550.00 for all Jewel stores, is that correct?

A. That is correct, sir.

294 Q. That means in the 515 Geneva store, there was about a \$7,200 more average earnings than in all the

other Jewel stores, is that correct, or almost more than one hundred per cent more, is that correct?

A. I believe your arithmetic is right. I do not have the—

Q. (Interposing.) Your answer is yes?

A. Could you quote me the figures again, please, sir?

Q. Sure, the average performance of all Jewel stores is \$5,515?

A. That is correct.

Q. The average performance for the 515 Geneva store is \$12,964?

A. Yes.

Q. Geneva does about seven thousand dollars plus more business than the average Jewel store, and what accounts for that?

A. I do not mean to be vague, but again it is a complicated answer that affects a lot of factors.

Q. Does night operations account for \$7,000 more?

A. I would not think so.

295 Q. You would not think so?

A. No, sir.

Q. Now, take the Elgin store, 368, it shows an average earnings of \$4,701, is that not correct?

A. That is correct.

Q. As against a performance for all Jewel stores, during the same period, of \$5,515?

A. That is correct.

Q. Substantially less than the Elgin store—substantially less in the Elgin store than the Jewel average, is that correct?

A. That is correct.

Q. How do you account for that?

A. The same answer that I had given you, sir.

Q. It would have been even worse without the night operations, is that what you are telling me?

A. I would say yes.

Q. Are there other factors which would be contributing to the fact that the 368 Elgin store is a less profitable store than the Jewel average?

A. Yes.

Q. There would be other factors?

A. Yes.

296 Q. Would you name those factors for me, please?

A. I would presume the locale and the size of the store, the manager who is out there, and possibly just the efficiency of the store in general.

The Court: Would population enter into it?

The Witness: I would say yes. Yes, it would.

The Court: And also the number of residents in the community?

The Witness: I would say in this particular one, yes.

By Mr. Dunau:

Q. Take a look, sir, at your 341 Joliet store. That has an average earnings of \$4,013 as against an all Jewel performance for the same period of \$5,515, and that is even worse than the 368 Elgin store, is it not, sir?

A. That is correct.

Q. Your answer as to the 368 Elgin store would apply then also, I take it, to the—

A. (Interposing.) To the No. 341.

Q. To the 341 Joliet store?

297 A. Yes.

Q. Now, take your 1161 Joliet store, sir, \$8,951 is the average earnings for that store, is that correct?

A. That is right.

298 Q. That is in the same city as the other store in Joliet which has \$4,013 average annual earnings, is that correct?

A. That is right.

Q. Now, the \$8,951 is substantially in excess of the Jewel average of \$5,515, is that right, sir?

A. That is correct.

Q. Is that substantial excess due to night operations?

A. I say—I would say that is only a portion, but it is a factor.

Q. A relatively small portion?

A. By about 15 per cent.

Q. How do you arrive at the 15 per cent figure, sir?

A. I would say it is a basis for the study of determining the before and after situation over an extended period of time because these underlying factors seem to be true in each of these situations, even though there is about a seven year time period covered; there are newer stores and there are older stores, and there are larger and smaller stores and all seem to be the same underlying factors 299 in almost all of each of these situations.

Q. I see; and would you show me where, in any of these studies here, you have a 15 per cent figure?

A. Well, that is one of the phenomena of averages. Very often you do not have a particular figure, which is actually 15 per cent, because they can hover above and below that.

Q. Where in this study do you get the 15 per cent figure?

A. It is actually the comparison of the company's performance with the study of these nine stores.

Mr. Christensen: Mr. Witness, would you point out the differential on the chart for counsel, and let's settle that right now.

By the Witness:

A. During a comparable period, the company went up 7.7 per cent, and these nine stores went up 23.1 per cent, and I believe the difference is 15.4 per cent.

By Mr. Duran:

Q. You are using the study itself to arrive at your 15 per cent?

300 A. That is right.

Q. At 7240 Hammond, you had an average annual earnings of \$3,884, is that correct?

A. Yes, sir.

Q. During the same period the company's performance was \$5,515, is that correct?

A. I don't see that—

Q. (Interposing.) No, I am sorry. You are absolutely correct and I am wrong.

Was the average Jewel performance for that period \$5,324?

A. That is correct.

Q. That is a little less than the \$1,500 less for the Hammond store than for the Jewel average?

A. That is correct.

Q. How do you account for it? Do you account for it in the same way you have indicated with respect to the other stores?

A. Yes, sir.

Q. All right, your 1755 Whiting store shows a \$3,142 average annual earnings as against a Jewel performance for the same period of \$5,324?

A. That is correct.

301 Q. Do you account for that difference in the same way as you have accounted for the other differences?

A. Yes.

Q. Now, take the last store, Michigan City, the average annual earnings for Michigan City is \$10,814 as against Jewel's performance for the same period of \$5,436, almost twice as much?

A. Yes.



Q. Do you account for that by night operations at the Michigan City store?

A. A proportion of the increase, yes.

Q. A proportion?

A. Yes.

Q. How did you determine the proportion?

A. From the study of what effect these night sales had on our operations.

Q. You are using the study to justify the difference?

A. I don't believe that that is exactly what you asked me.

302 Q. Let's go on to another subject, Mr. Brodnicki, and this time I would like you to take the sheets for each individual store, and the first one I have in front of me is 515 Geneva.

This shows, as I read it, that you had an 8.8 per cent increase in the sale of meat after you went to night operations, is that correct?

A. Yes, sir.

Q. And the increase in the hours was 15 hours, 6:00 p.m. to 9:00 p.m., Monday through Friday, is that correct?

A. Yes, sir.

Q. So for those 15 hours, are you telling me that there was an 8.8 per cent increase in the sale of meat?

303 A. I would say that contributed to the increase.

Q. It does not account for the increase, though?

A. It might not match it dollar for dollar.

Q. What do you mean "it might not match it dollar for dollar"?

A. Well, even in the company's performance we have various factors which affect our performance as in a given store, and I do not think you can isolate any one factor and say that it is precisely—we have to make a judgment, and this is a judgment based on statistics.



Q. I see. Now, Mr. Brodnicki, take a look at the 368 Elgin store. Did the same change in hours occur in the 368 Elgin store as had occurred for the 515 Geneva store?

A. Yes, sir.

Q. Does your first column show that there was a .5 per cent increase in meat sales after there was an expansion of the night market?

A. Yes, sir.

Q. And are you now telling me that the .5 per cent was due to night marketing?

A. I would say it would have been a decrease if it 304 were not for the operation.

Mr. Christensen: May I go back: Did I understand you to say that the same increase in night operations occurred?

Mr. Dunau: In these two stores, yes, sir.

By the Witness:

A. The same number of hours.

Mr. Christensen: All right.

By Mr. Dunau:

Q. How do you account for the fact that while you had this same increase in hours at the 368 Elgin store, as in the 515 Geneva store, that you showed an increase of 8.8 per cent in the Geneva store as against only a .5 per cent in the Elgin store?

A. I could not say specifically, but when a number of stores make up a group, you are not going to have all of your figures hovering right on an average. You will have some highs and some lows, and as you are indicating, these are the stores—some of the stores on the low end.

305 Q. Mr. Brodnicki, under the 368 Elgin store, during the same period that you had a .5 per cent increase in the volume of the sale of meat, you had a 2.5 per cent de-

crease in the sale of grocery products, or of all products, rather, is that not correct?

A. Yes, sir.

Q. So notwithstanding the fact that you increased in market operating hours, in that store you were losing business?

A. Yes, sir.

Q. Now, it also shows, under the Elgin store, that your payroll costs, both in the market and for all employees, increased in the second period over the first period, is that right?

A. Yes, sir.

Q. And your volume of sales decreased during that period, is that correct?

306 A. That is right.

Q. And your last figure shows that there was nevertheless an increase of 24.5 per cent in the earnings in that store?

A. Yes, sir.

Q. How do you account for an increase of 24.5 per cent in the earnings of a store when volume goes down and labor costs go up?

A. I was amazed with the same thing, and I spent several hours explaining this to myself, and it was a combination of meat operation gross margins and our grocery operations.

I might mention that our stock losses decreased here, too, and it was a combination of several things which affected it.

I did analyze this thing, and I went through and determined in my own mind that the figures were correct. I could not comprehend this at first, but it did tie in with our company records.

Q. Nevertheless, Mr. Brodnicki, you continued to use that 24.5 per cent increase as an increase attributable to an expansion in night markets, did you not?

307 A. Yes, sir.

Q. Even though your study shows that it had nothing to do with night marketing?

Mr. Christensen: I beg your pardon. He did not so testify.

The Court: Did you say that?

The Witness: No, sir.

By Mr. Dunau:

Q. All right, what did you say?

A. I said that I had found other things which contributed to this difference in profitability which accounted for, in this case, the larger share of the change.

Q. You used the 24.5 per cent increase in your study and attributed it entirely to the expansion of market operating hours, did you not, sir?

A. Yes, sir.

Q. And you did that notwithstanding the fact that you had only a .5 per cent increase in the volume of meat sold during the second year?

A. That is correct.

Q. And you made no inquiry, did you, as to whether the prices of meat had increased for the second year?

308 A. That is right.

Q. All right. Now, let's go to the 15 Aurora store, sir.

A. All right.

Q. Is it correct to state that in the 15 Aurora store, sir, the hours were expanded by six, from 6:00 to 9:00 p. m. on Thursday and Friday?

A. Yes, sir.

Q. That is correct?

A. Yes, sir.

Q. Notwithstanding that expansion, does your study show that you had a .3 per cent decrease in the volume of meat sold during that period?

A. Yes, sir.

Q. The same expansion of hours took place with respect to the 950 Aurora store, did it not?

A. Yes, sir.

Q. And in that store, sir, you had a 1.2 per cent decrease in the amount of meat sold notwithstanding the expansion of market operating hours?

309 A. That is right.

Q. Now, take a look at your 341 Joliet store, sir.

A. Yes.

Q. Do you have it, sir?

A. Yes, sir.

Q. Before the change, did that store sell meat at night from 6:00 p. m. to 9:00 p. m. on Friday?

A. Yes, sir.

Q. Did it then go to 6:00 p. m. to 9:00 p. m. Monday through Thursday, as well as Friday?

A. Yes.

Q. You had an increase of market hours of 12 hours, 6:00 p. m. to 9:00 p. m. Monday through Thursday, is that it?

A. Yes, sir.

Q. And you show an increase in the sale of meat of 45.9 per cent during that same period, is that correct?

A. Yes, sir.

Q. Did you increase your sale of meat by 45.9 per cent by opening your store 12 more hours from 6:00 p. m. to 9:00 p. m.?

310 A. I believe only a portion of that.

Q. Only a portion of that would be attributable to that, is that correct?

A. Yes, sir.

Q. Now, take a look at the 1161 Joliet store, and the same increase took place there, is that right?

A. Yes, sir.

Q. In market hours?

A. Yes, sir.

Q. And there you show an increase in the volume of meat of 18.7 per cent, right?

A. That is right.

Q. Both stores operate in the same city, do they not?

A. Yes, sir.

Q. Would marketing hours have the same influence on both stores in the same city?

A. They might.

Q. How do you account for the fact that in one store you have increased the sale of your meat by 45.9 per cent, and then in the other store by 18.7 per cent?

311 A. There are other factors, either this could have a different effect on customers in different stores, or there are other underlying factors.

Mr. Christensen: You mean different areas in the same towns have different shopping habits or their shopping habits could vary?

The Witness: Yes, that could be a determining factor.

By Mr. Dunau:

Q. Now, go to 7240 Hammond and 1755 Whiting.

A. Yes, sir.

Q. As I read this, before the change you operated the meat markets from 9:00 a.m. to 9:00 p.m., Monday through Saturday, is that correct?

A. Yes, sir.

Q. That was before the change?

A. Yes, sir.

Q. And the change was to increase the hours from 9:00 p.m. to 11:00 p.m. on Monday through Friday, is that right?

A. Yes, sir.

Q. So you had a 10 hour increase in marketing  
312 hours for the period from 9:00 p.m. to 11:00 p.m., is that right.

A. Yes.

Q. You show an increase in the volume of meat sold of 30.3 per cent, is that correct, for the 7240 Hammond store?

A. Yes, sir.

Q. Do you attribute an increase of 30 per cent to shopping between the hours of 9:00 p.m. and 11:00 p.m.?

A. I would say that was an important factor, yes, sir.

Q. Many people go out and buy meat between 9:00 p. m. and 11:00 p.m., is that correct? Is that what you are telling me?

Mr. Christensen: That is what the figures show.

By Mr. Dunau:

Q. Would you answer my question, sir? Many people buy meat between 9:00 p. m. and 11:00 p. m., is that correct, sir?

A. I don't know what you mean by many, sir, in relation to something else.

313 Q. Do you have a brisk trade between 9:00 p. m. and 11:00 p. m. in the sale of meats?

A. I would not say that it is brisk, no, sir.

Q. Would you say that it is very light?

A. No, sir.

Q. How would you describe it?

A. Moderate.

Q. How do you know that?

A. Oh, from the figures I have seen that tend to indicate the impact.

Q. All you are inferring from is your own study, is that it?

A. Most of my judgment is based on the figures of store sales, yes.

Q. Most of your judgment is based on looking at those figures, is that it?

A. I have talked to the men that work in these markets.



Q. I beg your pardon?

A. I have talked to the men that work in these markets, and they do say that there are or is a moderate amount of traffic through the store, so it seems to substantiate the figures.

314 Q. Did you talk to the people at the 7240 Hammond store?

A. I don't know which stores they were from. I know there were two Indiana stores, and we only have about—

Q. (Interposing.) When did you talk to them?

A. Last night.

Q. I see, and this study was made before last night, wasn't it?

A. The figures—the sales figures, yes.

Q. When was the study made?

A. It was made, oh, at least in the last two to six weeks.

Q. It was made in the last two to six weeks?

A. Yes.

Q. Of course, Mr. Brodnicki, you are not telling us, are you, that the 30.3 per cent increase in the volume of meat is due to an increase in the marketing hours from 9:00 p. m. to 11:00 p. m., are you?

A. I would say the study indicates a very appreciable—could I state it this way?

Q. Please.

A. I can't answer it yes or no, but could I state  
315 it in this manner?

Q. State it in any way you think it is right.

A. Even though, in some of the before and after situations, you see, there appeared to be even no change, I would say that by the same token that those figures have not been excluded because they do not prove the point, and just because some other figures over-prove the point, I think that is some of the factors that make up any average

of specifics because you have your highs and your lows, and that is all I can tell you.

316 By Mr. Dunau:

Q. Mr. Brodnicki, even the average, you would at least have to confirm your average, would you not, sir, to that portion of the increase in the volume of meat which resulted from the increase in marketing hours, would you not?

A. I don't understand quite—

Q. You are averaging, you say. Correct?

A. Yes, sir.

Q. In making your average, you are including in it all increase in the sale of meat which occurred in a store, are you not?

Mr. Christensen: Now, if the Court please, I don't know what figure counsel is now talking about. What we are trying to establish is the differential between stores.

Of course, our meat sales, company-wide, went up during all these periods. And the witness has told him repeatedly that there runs through on an average of 15 per cent differential. I don't know what average you are now talking about.

Tell the witness.

317 By Mr. Dunau:

Q. Mr. Brodnicki, in arriving at this 15 per cent—

A. Yes, sir.

Q. Did you include the figures which made up your 30.3 per cent on 7240 Hammond?

A. Yes, sir.

318 Q. At 7240 Hammond, the change which took place was in the increase in marketing hours from 9:00 to 11:00 P. M., Monday through Friday, is that correct?

A. Yes.

Q. That is what added to the hours?

A. Yes, sir.

Q. Ten hours, 9:00 to 11:00, correct?

You show for that period a 30.3 per cent increase in the sale of meat, correct?

A. Yes, sir.

Q. Are you attributing this 30.3 per cent increase in the sale of meat to opening the market between 9:00 P. M. and 11:00 P. M., Monday through Friday?

320 A. This would be the full effect of the store before and after.

Q. You, in other words, took the 30 per cent increase in meat and attributed it entirely to increase in marketing hours from 9 p. m. to 11 p. m. on Monday through Friday, is that it?

A. I said it was one of the factors operating.

321 Q. Let's see if we can get at it in this way, Mr. Brodnicki:

On this Plaintiff's Exhibit 13 for identification, you show meat sales increasing from \$9,667.00 to \$11,505.00, is that right?

A. Yes, sir.

Q. In arriving at your \$11,505.00 figure did you  
322 include all the increase in the sale of meat at 7240-Hammond?

A. I took the full sales of that store in those weeks.

Q. Mr. Brodnicki, the 1755-Whiting store had the same change of hours at the same time, did it not?

A. Yes, sir.

Q. For that period the Whiting store 1755 had an increase in the sale of meat of 12.7 per cent; is that correct?

A. Yes, sir.

Q. Can you account for the reason that notwithstanding the same increase in marketing hours you had a 12.7 increase in the sale of meat in Whiting, as against a 30.3 per cent increase at Hammond?

323 A. Possibly this operation had a different effect on our customers in that area.

Q. Other facts are entering into it than the marketing hours; is that it?

A. Possible effect on customers is one factor.

Q. All right. Let's go to the last one, Mr. Brodnicki, the Michigan City store.

As I read your document, before the expansion in the market operating hours, your meat department was operating 9 a. m. to 9 p. m., Monday through Saturday, is that correct?

A. Yes, sir.

Q. The expansion was to operate the meat department from 9 p. m. to 11 p. m., on Thursday and Friday, is that correct?

A. Yes, sir.

Q. So you had a four hour increase in market operating hours between the hours of 9 p. m. and 11 p. m., correct?

A. Yes, sir.

Q. And you show an increase in the volume of sale of meat of 59.2 per cent, is that it?

324 A. Yes, sir.

Q. And you included in your figure in ascertaining the increase in the volume of sales of meat, you included the entire 59.2 increase, did you not?

A. Yes, sir.

Q. You were therefore acting on the assumption that the entire 59.2 per cent increase was due to increase in marketing hours in that store from 9 p. m., to 11 p. m., on Thursday and Friday; is that correct?

325 A. No, if you read my footnote, there was another change.

By Mr. Dunau:

Q. Would you tell me the change, as indicated in the footnote?

A. Eleven weeks prior to this expansion of night meat selling hours, Saturday p. m., hours were extended from 6 p. m., closing to a 9 p. m., closing.

Q. Well, when you say eleven weeks prior to this expansion?

A. Each of these periods are four week accounting period.

Q. Yes?

A. And if you were to look at the difference between 1 and 2, which shows—it was like a plateau effect. Part of it was when we opened on Saturday night. Part of it was when we changed the other facet.

326 Q. Well, let me see if I understand, Mr. Brodnicki: First let's begin with the statement in the footnote, "Eleven weeks prior to this expansion of night meat-selling hours, Saturday P. M. hours were extended from a 6:00 P. M. closing to a 9:00 P. M. closing"?

A. Yes, sir.

Q. Now will you tell me when that occurred, based on that?

A. This would be based on our first accounting period in 1961.

Q. Give me a date; I cannot understand it that way.

A. I will point here.

During this period of time, here (indicating).

Q. In January of 1961 you increased the hours of marketing from 6:00 P. M. to 9:00 P. M. in the meat department of your Michigan City store, is that it?

A. Yes, sir.



Q. All right, then let me ask you this:

327 Let us assume that your entire period of "before" excluded any operation of markets on Saturday after 6:00 P. M., so that your entire period and eleven weeks less than the entire period, had no operation on Saturday from 6:00 P. M. to 9:00 P. M.

Then I would ask you this: The expansion in marketing hours on that assumption is 9:00 P. M. to 11:00 P. M. on Thursday and Friday, and 6:00 P. M. to 9:00 P. M. on Saturday, is that correct?

A. That's right.

Q. That gives me seven additional marketing hours, as a result of the change, correct?

A. Yes, sir.

330 Q. Mr. Brodnicki, please look at your Item B Recap pertaining to performance for all Jewel stores.

A. Yes, sir?

Q. As of the year 1954-55, all Jewel stores show an average earnings of \$3,383, is that correct?

A. Yes, sir.

Q. And for the succeeding year, 1955 to 1956, they show a \$4,776 increase in earnings, is that correct?

A. During those time periods indicated.

Q. Yes, so—

A. It is a portion of those years, yes.

Q. Well, it is the full year, is it not? And you are taking the full year in each case?

A. It would be the portion of the year, as indicated back on that page.

Q. But it is an annual period?

A. It is a one-year period, yes. Those figures are correct.

331 Mr. Christensen: So I understand, Mr. Witness, that the years in here are not necessarily full calendar years?



The Witness: Yes, it would be the—that is correct.

Mr. Christensen: They mark a 12-month period that come in the calendar years that you have noted on here, to correspond with the—

The Witness: Corresponding with the particular store they are being compared with.

By Mr. Dunau:

Q. But in using the comparison, you are using the full year?

A. Fifty-two weeks.

332 Q. Now the before period, 1954 to '55, for all Jewel stores, is an average of \$3,383.00, correct?

A. Yes.

Q. The succeeding is \$4,776.00, is that correct?

A. Yes.

Q. What is the percentage increase for all Jewel stores, sir?

A. It appears to be about 38 per cent, I believe.

Q. My arithmetic gives me 41 per cent. Would you care to take a pencil and paper—

A. I believe you are correct.

Q. 41 per cent?

A. That sounds reasonable; yes, sir.

Q. Are you accepting 41 per cent, sir?

A. It is within one or two per cent, I am sure.

Q. During that period of time when all stores were increasing by 41 per cent, you had a change in the hours of 341-Joliet and 1161-Joliet, is that it?

A. Yes.

Q. In 341-Joliet, before the change, you showed average annual earnings of \$2,480.00?

A. Yes, sir.

333 Q. After the change you show it at 4700—is that one? I am sorry, that is the wrong figure.

A. You are on the wrong line.

Q. \$4,013.00?

A. Yes, sir.

Q. What is the percentage increase?

A. It appears to be about 65 per cent.

Q. I think you would find, if you did the arithmetic, that it was 61.8 per cent. Do you accept that?

A. Yes, sir.

Q. Now you take your 1161 store for the same period, your average earnings before were \$3,383.00, correct?

A. For the company or for the store?

Q. For the store, sir?

A. I believe they are—

Mr. Christensen: Which store?

By the Witness:

A. I believe they are \$8,284.00. Store 1161.

By Mr. Dunau:

Q. Store 1161?

The Court: Counsel has inquired which store.

334 By Mr. Dunau:

Q. 1161 would be—

A. 8,284.00, is the figure.

Mr. Christensen: \$8,284.00, Mr. Dunau.

Mr. Dunau: You are quite right, \$8,284.00.

By Mr. Dunau:

Q. And what was the average annual earnings for the succeeding earnings after the change?

A. \$8,951.00.

Q. What is the percentage increase?

A. Roughly 9 per cent.

Q. 9 per cent is very good. I have 9.1 per cent.

As I understand it then all Jewel stores increased 41 per cent. It would be 341-Joliet store increased 61.8 per cent, and the 1161-Joliet store increased 8.1 per cent.

Do you account for the difference from the average performance by the market operating hours?

A. I would say if they did not sell meat at night the spread would be greater.

Q. What correlation is there, Mr. Brodnicki, on the basis of any figures you have, between an increase of 61.8 335 per cent in the 341-Joliet store, and a 41 per cent increase in all Jewel stores?

A. I don't understand what you mean by "correlation."

Q. Mr. Brodnicki, let's go to 1958:

For the period preceding the change dealing with all stores in 1957—

Mr. Christensen: What exhibit, counsel? What page?

Mr. Dunau: Item B recap.

336 Mr. Christensen: B recap?

Mr. Dunau: Yes.

Mr. Christensen: Yes, sir, all right.

The Witness: Yes, sir.

By Mr. Dunau:

Q. Do you show \$5,286.00 as the average earnings for all stores?

A. Yes, sir.

Q. For the succeeding annual period you show an increase of \$5,515.00, is that correct?

A. Yes, sir.

337 Q. What percentage increase is that, sir?

A. Roughly about seven per cent.

Q. Would you like to try again? Isn't it about 5.3 per cent?

A. That is probably accurate.

Q. Probably accurate?

A. I would say you are right.

Mr. Christensen: The figures all appear on here, you don't have to do them out of your head.

The Witness: Actually, the computations were—

By Mr. Dunau:

Q. Take your 15-Aurora store:

That changed marketing hours during that period, did it not?

A. Yes, sir.

Q. Before the change, you had average annual earnings of \$5,157, correct?

A. Yes, sir.

Q. After the change you had a drop, \$5,024, correct?

A. That's right.

338 Q. You had a decrease of earnings in that store of 2.6 per cent, is that right?

A. Yes, sir.

Q. At the same time that you had an increase in other stores, all stores average, by 5.3 per cent?

A. That's correct.

Q. Take in 950 Store, sir, Aurora:

Average annual earnings, \$5,206, right?

A. That's right.

Q. A drop for the succeeding year of \$4,700—to \$4,750, correct?

A. Yes, sir.

Q. A decrease in that store of 8.8 per cent, correct?

A. Yes, sir.

Q. Notwithstanding an increase of 5.3 per cent in all other Jewel stores, right?

A. Yes, sir.

Q. Take your 368 Store, Elgin:

For the same period, average earnings before the change \$3,777, right?

A. Yes, sir.

339 Q. After the change, \$4,700, right?

A. Yes, sir.

Q. An increase of 24½ per cent, correct?

A. Yes, sir.

Q. Take your 515 Store, Geneva:

Average earnings before the change of \$11,878, is that right?

A. Yes, sir.

Q. That was well in excess of the Jewel average before a marketing hours change, was it not?

A. Yes, this is above the average.

Q. An increase, after the change, to \$12,964, correct?

A. Yes, sir.

Q. Showing an increase of 9.1 per cent, right?

A. Yes.

Q. Let's go to 1956-57. That was the after.

That pertains to your 7240-Hammond, and 1755-Whiting stores, does it not?

A. Yes, sir. I believe so, yes, sir.

Q. At your 1755-Whiting store before the change, you had average earnings of \$2,620, right?

340 A. Yes, sir.

Q. After the change, \$3,142, correct?

A. Yes, sir.

Q. Does that give me an increase of 20 per cent?

Mr. Christensen: That's what the exhibit shows.

341 By Mr. Dunau:

Q. Your 7240 Store, Hammond, for the same period, before the change, \$2,786, correct?

A. Yes, sir.

Q. After the change, \$3,884, correct?

A. Yes, sir.

Q. What was your increase in earnings?

A. 39.4 per cent.

342 Q. During the period from 1960 to 1961, did you have an average Jewel performance for all stores of \$5,588?

A. Yes, sir.

Q. Was that reduced in the succeeding year to \$5,436?

A. Yes, it was.

Q. Is that a 2.8 per cent decrease?

A. 2.7 per cent.

Q. All right, sir.

During the same period your Michigan City store, Item 84, showed an increase in earnings of 110.3 per cent, did it not?

A. Yes, sir.

Q. Mr. Brodnicki, do you know whether in Joliet  
343 there is a third store, Jewel store in operation, in addition to the two that we have been discussing on your survey?

A. Yes, I believe there is a store called Hillcrest.

Q. Hillcrest?

A. Yes, sir.

Q. What are the market-operating hours in the Hillcrest store, sir?

A. They are not open at night, I don't believe.

I will take that back. They sell meat on Friday night and they sold meat on Friday night ever since they have been open.

Q. I think that's wrong. Would you take another look, sir?

A. Well, this study was conducted in the years 1954 to '56, and that store opened in '58.

Q. Well, let's make it easier.

On Page 2 of the last pages of your document, you have a listing for Hillcrest-Joliet, correct?

344 A. Yes, sir.

Q. The last column shows store hours, market, does it not?



A. Yes, it does.

Q. And it shows that the store hours in the market are 9:00 to 6:00, does it not?

A. Yes, sir.

Q. There are no night hours in that store in Joliet, is that correct?

A. You are right.

Q. There are no night operations in that store, is that correct?

A. You are right, sir.

345 Mr. Dunau: Would you mark that as Defendant Union's Exhibit 1 for identification, please?

(Said document was marked DEFENDANT UNION EXHIBIT NO. 1, for identification.)

349 FRANK GARCHER, a witness, by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

350 *Direct Examination by Mr. Christensen.*

Q. Will you please state your name?

A. Frank Garcher.

Q. Where do you live, Mr. Garcher?

A. My address is 3321 West 66th Place.

Q. And you are employed by whom?

A. Jewel Tea Company.

Q. Jewel Tea Company?

A. Yes.

Q. In January of 1948, what was your position with Jewel Tea?

A. Store manager—grocery store manager.

Q. That store was located where?

A. In 1948?

Q. In 1958.

A. 7921 South Cicero.

Q. In Chicago?

A. In Chicago.

Q. Do you recall the circulation of a customer questionnaire survey in your store in January of that year?

A. Yes, sir, I do.

351 Q. I now show you Plaintiff's Exhibit 12, for identification, and ask you if that is identical with the questionnaire that you circulated in your store at that time?

A. Yes, it is.

Q. Mr. Garçher, in what way were those questionnaires circulated or made available to the customers in your store?

A. Well, we took a card table and set it up in the front of the store, and had a girl available to pass those out to customers as they walked in.

We had pencils available for the customers, and we set up a box, just like a ballot box, and as the customer  
352 filled those out, they put them in the box.

When the girl would go to lunch, she would take the balance of the ballots and pass some of them out to the girls who were checking, and then the girl—the girl who was there would also pass them out while she was at lunch.

Q. Now, the girls who were checking, that means the girls there in your store who were at the pay-out counters and checked over the goods and took the customers' money?

A. Yes.

Q. Where the customer has to go by the checker to get out?

A. That is correct.

Q. Is that not right, sir?

A. That is correct.

353 Q. At the conclusion of the balloting did you tabulate the results in your store?

A. I believe we did, sir. I have one right here that was concluded from the—

Q. Does that bear your signature?

A. Yes, sir, it does.

Mr. Christensen: Please mark this Exhibit 12-A, for identification.

(Said document was marked as requested.)

By Mr. Christensen:

Q. And is that the correct tabulation of the ballots cast in your store in the month of January and the various questions asked on Exhibit 12?

A. That is correct, sir.

Q. What did you do with the yellow sheet, Exhibit 12-A, after it had been completed, I take it under your supervision and you signed it, then what happened with it so far as you know?

A. We sent this to the office. I believe it was addressed to Mr. Woerthwein.

Mr. Christensen: You may cross-examine.

354

*Cross-Examination by Mr. Dunau.*

Q. Mr. Garcher, how many entrances are there at the store at 7921 South Cicero?

A. Well, there is—from the south side there is an entrance in the store, and on the north side there is an out entrance.

Q. You can get into the store either from the south side or from the north side, is that correct?

A. That is correct.

Q. Where did you set up this table, sir?

A. At the south end of the store.

Q. What about the customers who would come in and go out at the north end?

A. Well, there would be very few that come in that way. It is an out door. It has a big "out" on it.

The only way they can come in that door is that if somebody is going out while the door is open they can come in.

Q. Perhaps I misunderstood.

One door is normally used as an entrance and one as an exit?

355 A. That's right.

Q. You put the table up where?

A. At the incoming door.

Q. The incoming door?

A. Yes.

Q. And each customer who came in was given a questionnaire by the girl sitting at the table, is that it, sir?

A. That is it.

Q. Now when this girl went out to lunch you had another method of distributing the questionnaires, did you not?

A. That is right.

Q. And this was to have the checker stuff them into the bag of groceries, is that the way it worked?

A. Well, either stuff them in her bag or they handed them to the customer to read, if they wanted to fill them out immediately. They would go to the table and fill them out and put them in the box.

Q. What period of time would elapse, would be taken up by the checker distributing the questionnaire?

A. At the time she passed them out?

356 Q. Yes, how long did she do it, rather than the girl at the table?

A. Oh, probably just a half a minute or so.

Q. No, I am sorry, I didn't make myself clear:

The girl at the table would go off for lunch?

A. Right.

Q. How long would she be gone?

A. One hour.

Q. During that one hour the checker would be distributing the questionnaires, is that correct?

A. That is right.

Q. How many checkers in this store, sir?

A. Seven.

Q. Did each one of them distribute?

A. Each one of them had some ballots to pass out.

Q. Over what period of time did the distribution take place in your store, sir?

A. You mean the whole period?

Q. Yes?

A. Thursday, Friday and Saturday.

Q. Three days?

A. Three days.

357 Q. How many customers ordinarily pass through your store in that three day period?

A. Oh, there is quite a number. I couldn't say exactly.

358 Q. Would you have an approximation, sir?

A. Probably about three thousand.

Q. You had three thousand customers passing through the store during that 3-day period?

A. Right.

Q. Do you have any idea of how many of them would be repeat customers? That is, how many that had come in on Thursday, would come in on Friday?

A. I couldn't say, sir.

Q. Would it be a substantial number?

A. It would.

Q. Excluding repeat customers, do you have an approximation about how many customers passed through the store, your store, during the 3-day period that the questionnaire was distributed?

A. Three days?

Q. Yes, for those three days?

A. In the neighborhood of three thousand or more.

Q. In the neighborhood of three thousand?

A. Yes.

Q. And how many questionnaires did you receive  
359 to distribute during this time?

A. Sir, I don't recall.

Mr. Dunau: I have no further questions.

*Redirect Examination by Mr. Christensen.*

Q. One additional question:

Mr. Garcher, have you circulated questionnaires or opinion surveys amongst your customers on other subjects in recent years?

A. Yes, we have, sir.

Q. And was this done in the way the company usually distributes a questionnaire when it is endeavoring to get information from its customers?

A. That is correct.

360 ROBERT THOMAS MARSHALL, a witness called on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you please state your full name for the record?

A. My name is Robert Marshall, Robert Thomas Marshall, Jr.

Q. Where do you live, Mr. Marshall?

A. I live at 14717 Chicago Road in Dolton, Illinois.

Q. And in January of 1958, were you employed by the Jewel Tea Company?

A. Yes, sir. I was manager of the store at 6227 South Kedize.



Q. Chicago?

A. Chicago, yes, sir.

361 Q. Do you recall a circulation in your store of a questionnaire identical, except for store number, Plaintiff's Exhibit 12, for identification?

A. Yes, I do. I recognize the questionnaire.

Q. Will you explain to Judge LaBuy how circulation of that questionnaire was conducted in your establishment?

A. Yes. I took and I set—I took the questionnaires and I set them on top of what we call turkey order boards, sort of a desk-like affair that sits over one of the carts.

I put them on top of the cart, on top of the board, and I had pencils. In back of it we had a sign asking the customers if there was a need for them to shop nights, or if they really wanted to shop nights. They could vote on it.

We also had a ballot box there.

Q. Just before you go on, do you know where that sign is now?

A. No, I don't know where the sign is now.

Q. Was it destroyed when you were through with it?

A. Yes, it was.

362 After we were through with it, and it had served its purpose, we destroyed it.

Q. Go ahead and explain what went on?

A. I put it in the first aisle, right next to the market, so people could see it as they came in the store. They couldn't miss it if they were going to buy meat.

Q. At the end of the tabulating time, did you collect the ballots and total them up?

A. Yes, I did.

Q. Do you have your tabulation of that available on the stand in your hand?

A. Yes, I have.

Q. May I have it one moment?

A. Here you are.

Mr. Christensen: May this be marked Plaintiff's Exhibit 12-B for identification?

(Said document was marked Plaintiff's Exhibit 12-B, for identification.)

363 By Mr. Christensen:

Q. Is the yellow sheet, Exhibit 12-B, your tabulation and report on the results of this balloting, or opinion survey?

A. Yes, it is.

Q. When you were through with it, did you send it in to Mr. Woerthwein at headquarters?

A. Yes, I signed it and sent it to him.

Q. Was it true and correct to the best of your information at the time you did it?

A. Yes, sir.

Q. And have you conducted other opinion surveys among your customers in your store?

A. Yes, I have, sir.

Q. Was this conducted in the way that the company usually conducts an opinion survey on any subject it is trying to ascertain the desires of its customers with respect to?

A. Yes.

Mr. Christensen: You may cross-examine.

364 By Mr. Dunau:

Q. Sir, did I correctly hear that the store that you manage is 6227 South Kedzie, K-e-d-z-i-e?

A. Yes, that's right.

Q. Over what period of time, sir, did you have the questionnaires distributed in your store?

A. It was, I think, over the week-end. Thursday, Friday and Saturday.

Q. And during that period of time, how many customers would normally patronize the store?

A. I would say about twenty-five hundred.

Q. About twenty-five hundred?

A. Yes.

Q. In your store, Mr. Marshall, did you use any method of distributing the questionnaires, other than to put it on this turkey counter or whatever it is called?

A. No, I just set it on the desk—turkey order board, with this sign.

365 CHESTER CHEKI, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you please state your full name for the record?

A. Chester Cheki, C-h-e-k-i.

Q. Where do you live, Mr. Cheki?

A. 7921 Berwyn Avenue, Chicago.

Q. In the month of January, 1958, were you a manager of a Jewel store?

A. Yes, I was, at 2951 Central Street in Evanston.

Q. Do you recall the circulation in your store of a questionnaire opinion survey, identical to Plaintiff's Exhibit 12 for identification?

A. I do.

Q. And will you please state how it was distributed to the customers in your particular store?

A. Yes, we had set up—we had placed a girl in the first aisle, or the incoming aisle of the store, to pass these out to the customers. We passed them out for 366 three days. We had placed a deposit box at the end of the meat counter. It was a very tight store, and everybody would have to pass the meat counter.

Q. Tight store, you mean there wasn't too much space, small store?

A. That's right.

Q. And did you provide pencils for these people?

A. Yes, the contraption is sort of a podium with a slot to deposit the ballots and a place for pencils.

Q. It is a device that is made just like this podium. If a customer wants to order turkey in advance, she can order it and put the order in here (indicating)?

A. That is what it is commonly used for, yes.

Q. And you used it as a ballot box?

A. Correct.

Q. At the conclusion of the balloting, did you tabulate the results?

A. We did.

Q. And was that done under your supervision?

A. Yes, it is.

367 Q. You ultimately signed it?

A. I did.

Q. And sent it in to the headquarters?

A. I did.

Mr. Christensen: Please mark this Plaintiff's Exhibit 12-C, for identification.

(Said document was marked Plaintiff's Exhibit 12-C for identification.)

By Mr. Christensen:

Q. And was 12-C true and correct?

A. Yes, sir.

Q. To the best of your knowledge, at the time it was filled in in January, 1958?

A. Yes, sir.

Q. Was this survey conducted in the ordinary course of business, and this record made in the same fashion that you had made customer surveys on other topics for Jewel Company during the last several years?

A. Yes, sir.

Mr. Christensen: You may cross-examine.

368 By Mr. Dunau:

Q. Mr. Cheki, I am not sure I understood. Would you explain for me again the method of distribution which was used in your store?

A. Yes, I had received six hundred ballots, and we had passed out two hundred a day.

Q. How did you pass them out?

A. The girl passed them out until the two hundred were gone.

Q. Where was this girl stationed?

A. At the incoming aisle, right past the turnstile.

Q. You have one incoming aisle?

A. That's right.

Q. And as the customer came in the girl would distribute a questionnaire to the customer?

A. Right.

Q. This was a three-day period?

A. Yes, it was.

Q. How many customers customarily passed through your store during this three-day period?

A. Well, I would say between 2,000 and 2,500.

Q. Could a customer have gotten two questionnaires?

A. Oh, it is possible. Unlikely.

Q. Was any check made to determine whether a  
369 customer deposited a questionnaire twice?

A. There was no check, but I am the floor manager. I do stay out on the floor, and I would have no doubt noticed if they were being stuffed or—I didn't notice any unusual action, let me put it that way.

370 DONALD JOHN ZANZIG, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christenson.*

Q. Will you state your name for the record, please?

A. Donald John Zanzig, Z-a-n-z-i-g.

Q. Where do you live, Mr. Zanzig?

A. I live at 14334 South University Avenue, Dolton, Illinois.

Q. In the month of January, 1958, were you employed as a store manager by Jewel Tea Company?

A. Yes, I was.

Q. At what store?

A. 12730 South Halsted, Chicago, Illinois.

Q. Do you recall the circulation of an opinion survey identical with Plaintiff's Exhibit 12 in your store in that month?

A. Yes, I do.

Q. Would you tell Judge LaBuy how that was distributed and collected in your particular store?

371 A. In my particular store it was on a voluntary basis. We had set up a display using this same turkey order board, placed on top of two toilet tissue boxes, in our last aisle.

We would call it the last aisle before hitting the check-out department. And we placed a supply of questionnaires along with pencils for the customer to select and fill out.

We used a sign which was provided attached to this turkey order board.

Q. Your sign also destroyed, as you heard the witness testify.

In substance, the sign asked them to express their opinion as to night necessity or need of night operations in the meat department?



A. That is correct, sir.

Q. At the conclusion of the balloting were the results tabulated either by you or under your supervision?

A. Yes, sir.

Q. Did you then report them to the company?

A. Yes, I did.

372 Q. Is Exhibit 12-D your tabulation of the results in your store of survey conducted in the manner you have described?

A. Yes, sir.

Q. One other subject with this witness as long as I have him here.

What is your present position with the Jewel Tea Company?

A. I am the store manager of a store now called Food City, located in Highland, Indiana.

Q. Operated by the Jewel Tea Company, but operated under the name of Food City, is it not?

A. Yes, sir.

Q. It handles different brands of goods?

373 A. Yes, sir.

Q. None of the Jewel brand names, as I understand it?

A. That is correct, sir.

Q. Does it have a self-service meat department?

A. Yes, sir.

Q. How many evenings a week are butchers present at the self-service meat department?

A. At present there are two nights a week.

Q. Two nights a week?

A. Yes, sir.

Q. And how many nights is the meat department open?

A. I would like to stipulate one thing there, if I may.

Q. Yes.

A. We have a sausage department in our store, where there is either a butcher or butcher ap available every night of the week. But if you are referring to the fresh meat counter—

Q. Fresh meat counter.

A. It would be two men—one man for two nights.

374 Q. And is the store open nights beyond those two nights?

A. Yes, sir, we are open six days a week, from 9:00 in the morning until 10:00 o'clock at night.

375 Q. Week in and week out, what is the relative volume of meat sales up to the hour of 6:00 p. m. and after the hour of 6:00 p. m.?

A. We have found, sir, that our sales in both groceries, produce and meat are equalized in the evening sales from the hours of 6:00 until 10:00, according to our sales record kept in the store, and of that, from 9:00 on until 6:00.

Q. You sell as much, on the average, after 6:00 o'clock, as you do in all the hours before?

A. That is right, sir.

Q. And you are open from 6:00 until when?

A. We are open each day from 9:00 o'clock in the morning until 10:00 o'clock at night.

Q. From 9:00 o'clock in the morning until 10:00 o'clock at night or in the evening?

A. Yes.

*Cross-Examination by Mr. Dunau.*

Q. How many customers passed through your store during the period that you distributed the questionnaire?

376 A. That is rather difficult to answer accurately, sir, and I would have to say in the neighborhood of about 2,500.

Q. And during what period did you have the questionnaire distributed, sir?

A. Well, I had mine available for a complete week, to my knowledge, and I believe it was a few days longer than that.

They set this up and then let it run until—well, we set it up on a voluntary basis rather than having a person distribute them. I put mine up, I would say, upon receipt of the questionnaires, and I would put them out each day and send them in at the end of the period.

Q. You say that you sent them in at the end of the period?

A. Yes.

Q. Between the time you received them and the time you sent them in, how many days elapsed in which the store was open, sir?

A. I would have to say six days only.

Q. Six days?

A. Yes.

377 Q. At the store you presently manage, what are the hours of operation of the meat department?

A. The hours of the meat department are the same as the entire store.

Q. And what is that?

A. From 9:00 o'clock in the morning until 10:00 at night.

Q. And from 6:00 to 10:00, how many butchers do you have on duty, sir, on Monday?

A. Excluding our sausage shop, as I previously stated, we have a man available on Friday and Saturday nights.

Q. Now, including the sausage shop, you have them available on each night of the week, is that right?

A. Yes, but it is being considered two departments in the store, though. I am trying to make myself clear on that. It is not attached, and I would have to refer to it

as the cooked foods department, this other department.

\* \* \* This other department that I am referring to, 378 which is under the operation of the meat department, would have to be referred to, I believe, as the cooked foods department, having other than meat items available.

By Mr. Dunau:

Q. Is it part of the meat department?

A. It is managed under the meat department.

Q. Is the person who works in there on Monday, Tuesday, Wednesday and Thursday, sir, is he a member of one of the local unions of the Amalgamated Meat Cutters?

A. Yes, sir.

Q. During Monday, Tuesday, Wednesday and Thursday, does that man also help with other items in the meat department outside of the sausage department?

A. No, sir.

Q. He does nothing with respect to other items?

A. No, sir.

Q. If a customer would ask him about a piece of steak, he would say that "It is not in my business"?

A. Well, this is a question that I have never witnessed —an incident of that nature, so I could not answer the question.

379 Q. Well, have you ever witnessed a customer asking this man about fresh meat during the other nights of the week?

A. No, sir, I have not.

Q. Have you directed him not to work in the other parts of the store during other nights of the week?

A. I have not.

Q. Does he clean the case out, sir, at the end of 10:00 o'clock, in the entire meat department?

A. No, sir.

Q. Does he rearrange the case during the hours that he works on Monday, Tuesday, Wednesday or Thursday?

A. No, sir.

Q. Why do you, for Monday, Tuesday, Wednesday and Thursday—why do you confine him to one part of the meat department, sir?

A. Who?

Q. You, sir, why do you confine him to one part of the meat department?

A. As I have previously stated, this is a separate department, and there are many items available in this department. It is a service department; is it not a self-380 service department, and, therefore, it needs an attendant.

JOHN ILIKA, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Would you please state your full name for the 381 record, sir?

A. My name is John Ilika.

Q. Where do you live, sir?

A. I live at 12217 South 68th Court, Palos Heights, Illinois.

Q. During the month of January, in 1958, what position did you hold with the Jewel Tea Company?

A. I was division manager, operating division manager of the Northern Division at that time.

Q. In a general way, sir, describe the boundaries of the Northern Division.

A. Well, the boundaries of the Northern Division at the time were approximately Oak Street to the south, Waukegan to the north, and Barrington to the west.

Q. And approximately how many stores were in that division?

A. There were, I believe, 70 stores in that area at that time.

Q. Do you recall that in that month an opinion survey, of which Plaintiff's Exhibit No. 12 is a sample, was taken in the stores?

A. Yes, I do.

382 Q. Were you in several of the stores in that division during the time that that opinion survey was being conducted?

A. Yes, I was.

Q. You have been here in the last few minutes and you have heard the last four witnesses testify as to the various methods by which this was made available to customers in the store, and is their testimony typical of what you actually observed as to the distribution of that document in your division during that period?

A. Yes, I would say that the method of distribution of these questionnaires depended on the size of the store and the volume of the store, and also the amount of help available at the time.

One man did it one way that was the most efficient way for him to do it, and then somebody else would do it the other way, but all of these methods were used as the men stated.

Q. Has the company, from time to time, conducted other surveys or put other questionnaires out to its customers?

A. We always do, sir. We like to go to our cus-  
383 tomers and ask them to tell us about some of the problems they face.

Q. And these particular ballots or questionnaires were circulated in the same way that you have circulated questionnaires upon other subjects the management believes



desirable to ascertain the customers' views on, is that correct?

A. Yes, sir, they were.

*Cross-Examination by Mr. Dunau.*

Q. Mr. Ilika, what stores were you in in which you observed the questionnaires distributed?

A. This, sir, would be a very difficult question to answer at this time, but I would say that in the course of a week at that time I would get into about 15 to 20 of my stores.

Q. Let's take one or two of them, and can you recall one store that you were in?

A. No, I can't. Of the 15 or 20 you can't always remember.

Q. You are telling me that of the 15 or 20 stores that you cannot now remember any one of them, sir?

384 A. No, this would be a very hard thing to do, and I would just be guessing, if I did.

Q. How long did you stay in the store, sir?

A. On my visit to the store, the length of my visit to the store would depend on the reason I went into the store, and if I had a problem, I would probably stay there longer. If I did not have a problem, and I was just there for a normal visit, I would say, I would just stay for about 15 or 20 minutes. In some of the stores I may stay as long as two or three hours, depending upon why I had come to the store or why I had gone there.

385 Q. Take the store with the problem where you were two or three hours. Would you be in the store or would you be in the office of the store?

A. I would be in the store.

Q. Observing the operation, sir?

A. Yes, sir.

Q. In these fifteen or twenty stores that you were in, what is the number of customers that would be going

through the store during the period of the distribution of the questionnaire?

A. Well, this again would depend upon the size of the store, the location of the store. It is in a congested area, is it in a suburban area. It would be very hard to tell how many customers go through a certain store at a certain time.

The customer count on the store might run from three thousand to eight thousand.

Q. The stores you visited the customer counts, that would vary between three and eight thousand; sir?

A. Or less or more.

Q. At least there would be some that would have three thousand going through the store during the period 386 of the distribution?

A. I would say it would.

Q. Some eight thousand?

A. I would say so.

Q. How much below three thousand would you take it, sir?

A. Well, we have some pretty small volume stores where your customer count would be less than three thousand.

Q. How much less, sir?

A. I couldn't say.

Q. How much higher than eight thousand would you take it?

A. Well, some of the real large volume stores have a considerably larger count than that.

Q. About how high would that larger count go, sir?

A. It could be any number. I wouldn't guess.

Q. Nine thousand?

A. I wouldn't guess at all.

Q. You have a notion, do you not, sir, of at least one store in your division which has more than eight thousand

customers going through during the period of a distribution, do you not?

A. I would say yes, at that time.

Q. All right. Select one of those stores that you have in mind and tell me if that store, or how many customers go through the store which has more than eight thousand customers?

A. How many more customers than eight thousand?

Q. Yes, sir, in any particular store?

A. This would depend upon the volume of the store entirely, and it would be pure guess on my part.

It could be anywhere from fifteen hundred to eight thousand and five thousand and six thousand. It depends on the volume of the store.

Q. Well, perhaps I have not made myself clear, sir.

In your division I understood you to say that you had stores in which, during the period of distribution, more than eight thousand customers would be going through the store, is that correct?

A. A weekly customer count I would say is eight thousand, yes.

Q. But did you also state that there were some stores which had more than eight thousand customers going through a weekly customer count?

A. Yes.

Q. Now, as to one such store, tell me how much more than eight thousand there would be?

A. This would be a pure guess. I say that there are some that are eight thousand, or we have had some that are eight thousand and some are more.

Q. But you are not now—

A. I don't know what you are driving at.

Q. You are not now able to identify for me a store which has more than eight thousand customers going—

A. I can think of a store right now that I have, that

I had in my area at that time that had more than eight thousand customers.

Q. How much did that store have, sir?

A. Eighty-five hundred.

Q. Is that the range?

A. What range?

Q. Between twenty-five hundred and eighty-five hundred, sir?

A. Are you saying is this the top?

389 Q. I am asking you, yes, is eighty-five hundred the top?

A. I don't know.

Q. In the stores that you observed the questionnaire being distributed, were there some stores that distributed the questionnaire by having the checker stuff the questionnaire into the bag of groceries as the customer was leaving the premises?

A. This is not our normal procedure, to stuff questionnaires. We usually make it available to customers. There are some who refuse it and there are some who take it.

Q. Did you observe in the stores that you were in, whether the method of distribution was to stuff the questionnaire into the bag of groceries as the customer left the premises?

A. I did not.

390 FRED H. WOERTHWEIN, a witness called on behalf of the plaintiff, having been previously duly sworn, was examined and testified as follows:

*Further Direct Examination by Mr. Christensen.*

Q. Mr. Woerthwein, you are the same Woerthwein previously sworn and examined here, are you?

A. I am.

Q. I again show you Plaintiff's Exhibit 12 for identification, and ask you if that is one of the actual ballots distributed in your stores in this opinion survey with respect to night operations?

A. Yes, it is.

Q. And are Exhibits 12-A to D, inclusive, returns that were sent in to you by the respective managers?

A. Yes, they are.

Q. Now did you receive returns on similar forms from all of the managers of the stores then operating in the Chicago area in 1958?

391 A. Except those which had night sales of meats.

Q. Well, there were none of those in the Chicago area, were there?

A. No.

Q. Now, are you able to state from your records how many ballots or questionnaires were distributed?

A. 100,000.

Q. And by stores, did you have a system upon which you determined how many to distribute to any particular store?

A. Yes.

Q. Would you state what that was?

A. I have a list of store addresses, and I supplied stores with some four hundred up to twelve hundred of these ballots per store.

Q. How did you make your choice as to whether they got four hundred or one thousand?

A. Volume, sales volume.

Q. And would you just state what the classifications were?

A. It was just an arbitrary grouping on my part. The volume is related quite directly to the customer count.  
392 I wanted to take a random sample of the customers that were passing through a store for this opinion. The smallest group of stores received four hundred. The size next larger received six hundred. Then up to eight hundred, one thousand, and finally, twelve hundred in the very large stores.

Q. As determined by volume?

A. By volume.

Q. How many grand total of questionnaires were returned?

A. I received back from the stores 18,775 of these questionnaires.

Q. How many "Yes" responses did you receive?

A. 16,747.

393 Mr. Christensen: I will offer Exhibits 12 and 12-A to D, inclusive, in evidence at this time.

394 The Court: The objection is overruled, and your objection will be considered in connection with the weight to be given to this.

They are admissible.

(Said documents, so offered and received in evidence, were marked PLAINTIFF'S EXHIBITS 12, 12-A to D, inclusive.)



395. By Mr. Christensen:

Q. Mr. Woerthwein, is Exhibit 12-E your master copy of the total tabulation of results of this questionnaire?

A. Yes, it is.

Q. Now, without bothering to go through each of the figures in answer to Questions 2, 3, 4, 5, are those the tabulation of the numbers of results shown, where the customer had circled the nights that he or she wished operations to take place?

A. Yes.

Q. And you show in each instance a figure, and then below it the very small figure, I take the first line under Paragraph 2-B, night, number requests, and then under the letter M appears 207.

That means that 207 requests for Monday night operations?

A. 207 of the customers who responded yes; they would prefer to shop on nights—

Q. Also wished Monday night?

A. Also wished Monday night.

396 Q. Below that appears a figure 1.1. Is that a percentage figure, although the percentage sign is not shown?

A. This is the per cent of the number of customers who preferred number, to the total.

Q. All right.

Now, are each of the figures, each of the tabulation in the body of the report where you have this small figure under the big one, the No. 1 represents head or number of—the upper figure represents heads or number of customers responding, and the figure immediately below it represents a percentage of the total?

A. Yes, sir.

Mr. Christensen: I will offer this Exhibit 12-E in evi-

dence, rather than keeping the witness on and reading the entire matter.

Counsel has a copy.

Mr. Dunau: I have the same objection your Honor.

397 The Court: The same ruling. It may be received.

(Said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBITS 12-E.)

*Cross-Examination by Mr. Dunau.*

Q. Mr. Woerthwein, for the period that this questionnaire was distributed in the stores in the Chicago area, can you tell me the total number of customers approximately that passed through the Chicago stores, the Jewel stores?

A. Not without referring to a record, no. I cannot.

Q. Do you have an idea, Mr. Woerthwein, of the average number of customers which passed through a Jewel store in the Chicago area?

A. Currently or at that time?

Q. At the time of the survey?

A. Roughly, I would say, it was about 4500 customers per week.

398

Q. And did you—

A. This is a customer transaction count now.

Q. I am sorry, sir?

A. That is a customer transaction count. This is not the measure of the number of customers.

Q. You mean there may be more than that in that figure, sir?

A. There could have been a customer who returned more than once during the week.

Q. Right. And by how much, approximately, would the repeat customer reduce the number of customers that went through the store?

A. I don't know.

Q. Would it be substantial?

A. I don't know.

Q. Is it your experience that a customer shops once a week?

A. I don't think you can answer that question, because customers shop very differently.

399 Q. During what period of time in the overall was this questionnaire distributed in the Chicago stores? Three days, sir?

A. I think a great deal of the stores completed it, yes, the first three days, the Thursday, Friday Saturday of the survey.

Q. And during a three-day period, Thursday, Friday, Saturday, would you be likely to have repeated customers?

A. In some stores.

Q. It would not, however, I take it, be a very substantial percentage?

A. I don't believe so.

Q. And during such a three-day period approximately how many customers would pass through a Jewel store on the average?

A. About 65 per cent of our total customer count.

Q. It would be 65 per cent of?

A. Of forty-five hundred, roughly.

400 Q. Mr. Woerthwein, I show you what has been marked as Defendants' Exhibit 2 for identification, which is a breakdown of the questionnaires distributed and returned, by store, and ask you whether you are familiar with that?

A. It is a summary of the sheets that I hold in my hand.

Q. This is a summary prepared by Jewel Tea Company. Is that correct, sir?

A. Yes.

Q. And it shows the return in each store in which the questionnaire was distributed, does it not, sir?

A. Yes.

Q. And the breakdown and the number of evenings in the store?

A. Yes.

402 ANN BALL, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you please state your full name?

A. Ann Ball, B-a-l-l.

Q. Is that Miss or Mrs?

A. Mrs.

Q. Where do you live, Mrs. Ball?

A. 9934 South Oakley.

Q. Chicago?

A. Chicago.

Q. Do you have an employment connection of some kind with an organization known as Market Facts, Inc.?

A. I do.

Q. And what is that connection?

A. I am an interviewer.

Q. Conducting surveys and opinion polls?

A. Correct.

Q. Do you do this full time or part time?

A. Well, I suppose full time in this case. I work  
403 for no one else but them.

Q. And did you participate in the last few days in a poll with respect to shopping habits of people in the Chicago area with respect to meat?

A. Yes, I did.

Q. Do you have with you the sheets that you used in interviewing people?

A. Yes, I do.

Q. And how were these interviews conducted, face to face or over the telephone?

A. By telephone. We had sample instructions. They were taken by the sampling method.

Q. And someone other than you determined whom you should call?

A. Yes, that was determined for us.

Q. And all that you did was place the calls on the instructions, record the answers of the person you were interviewing?

A. Correct.

Q. May I see a sample sheet, Mrs. Ball, one with the answers filled out?

A. Do you want more than one?

Q. No, just one.

404 Q. Were you given any instructions after the an-  
405 swers that the ultimate client hoped or desired to re-  
ceive from your interviews?

A. No, I didn't know anything about it. I didn't know who the client was or what—

Q. You didn't know when you called these people up that this was for the Jewel Tea Company, did you?

A. Oh, no, no.

Q. Did you know the use that was to be made of this survey?

A. No.

Q. You were endeavoring to get as truthful answers as you could to the questions that were written out?

A. Yes. My job is to merely take down what they say in answer to the question, and I give them the question exactly as it is set up for me.

Q. Well, now, your first one was 14. The tail end of it shows you called a Mrs. Harriet Mack of 2517 West Lindall?

A. Correct.

Q. Would you tell the Court just how your conversation would go, went with Mrs. Lindall?

A. "Hello, I am Mrs. Ball of Market Facts, Inc., a consumer research agency. We are conducting a 406 study of shopping habits, and I would like to speak to the lady of the household. Are you the lady of the household?"

And if we could not get the lady of the household we would call back, making several attempts to get that particular housewife.

Q. Then you would go through the questionnaire asking each of the questions in the verbiage that appears here?

A. That's right. If on the first call you got the housewife, then you would ask them the questions exactly as it is on the interview form.

Q. And you accurately recorded the data on sheets such as Exhibit 14 and 14-A?

A. I did.

Q. And the same process that you had described with respect to Interviewee Mrs. Harriet Mack—I said Lindall before, didn't I?

A. That was the street.

Q. Mrs. Mack lives on Lindall.

A. Yes, that was the street.

Q. You followed that same process?

407 A. Throughout the other—

Q. Throughout your entire stack of answers?

A. Of my quota, yes, sir.

408 Mr. Christensen: You may cross-examine.

Mr. Dunau: No questions.

Mr. Christensen: Thank you very much. You may be excused.

(Witness excused.)

Mr. Christensen: We now have and we will make avail-



able to you this interviewer's entire stack of questions, if you wish to look at them. It seems to me, however, to be a needless cluttering of the record.

Mr. Segall: Are you speaking of the individual answers?

Mr. Christensen; Yes.

Mr. Dunau: No, certainly not, not for the time being.

Mr. Christensen: We have three other interviewers present, whose testimony will be identical with that of the last witness. We can place them on the stand, if you wish.

Mr. Dunau: That will not be necessary.

Mr. Segall: They would merely identify the same 409 sort of procedure?

Mr. Christensen: The same procedure for this group.

Mr. Churchill, your group is now excused, but I would like for you to remain.

We offer Exhibits 14 and 14-A.

The Court: Do you have any objections?

Mr. Dunau: I have seen it.

410 JAMES BRODNICKI, recalled as a witness by and on behalf of the plaintiff, having been previously duly sworn, was examined and testified further as follows:

420 By Mr. Christensen:

Q. Mr. Witness, I place upon the stand here an exhibit that has been marked as 13-A for identification, Plaintiff's 13-A.

First, was this prepared under your direction? I don't mean the art work, but the—

A. I did set it up.

Q. You directed the art work as it should be done by the artist, is that correct?

A. Yes.

Q. Will you explain what this graph chart shows with relation to Exhibit 13?

A. It is primarily plotting on a chart form the figures that appear in the last two columns on the right-hand side.

The two percentage columns that appear on the table are merely plotted on a chart and shown in picture form.

Q. And the red column, showing the percentage of sales or increase, or whatever it may be, represents the performance of nine stores, as opposed to the blue columns of 421 the entire chain, excluding Eisner?

A. That is correct.

Q. For the comparable periods?

A. Yes, sir.

Q. It reflects in graph form the same information that is set forth in figures upon the Exhibit 13, is that correct?

A. Yes, sir.

Q. Now, while you are on the subject of Eisner, the Eisner chain was a preexisting chain acquired by Jewel some years ago operating in Central and Southern Illinois, isn't that correct?

A. That is correct.

Q. And its operations have not been taken into account by you in anything concerning the Chicago area?

A. No, sir.

Q. The other Jewel stores are located basically in the Chicago Metropolitan area, stretching over as far as, I guess it is, Benton Harbor, or somewhere, and into the southern edge of Wisconsin?

A. That would be the service point.

422 Q. As Racine or Kenosha?

A. That's right.

Mr. Christensen: I move the introduction of 13-A:

Mr. Dunau: As I understand it, 13-A is the same as 13, but the representation of the material is—

Mr. Christensen: It is graphic, rather than figures.

Mr. Dunau: I have the same objection to 13-A.

The Court: It is received in evidence.

(Said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT 13-A.)

By Mr. Christensen:

Q. Mr. Witness, were you requested to compile, from the company's regular records, figures and information as to the probable cost of a strike to the company in terms of expenses and loss of profits?

A. Yes, sir.

424 Q. Mr. Witness, in preparing this potential or probable cost of a strike, was it necessary for you to make assumptions as to whether all or part of the stores would be shut down?

A. Yes, sir.

Q. Will you explain to the Court what assumptions you made and what your figures show with respect to a—upon the assumption that the entire chain is shut down and that it is impossible to conduct operations?

A. Could I just explain the two basic assumptions I did make?

One is, in a complete shut-down I would assume that deliveries would cease. Deliveries would not be allowed to enter into the store, nor would our own drivers be allowed to enter the premises to bring to the store their merchandise, so from there you have two choices:

Either one, we can have a sale of the existing perishables or commodities in our store at the time, or if it is such a complete shut-down that the customers are not able to come into our store, it is conceivable that the

425 business would completely cease operations as of that night.

So we have either of two alternatives: One, to keep a skeleton crew on the premises to sell out the goods which are on the shelves and the perishables; or where the goods, the doors are closed that night, possible we have one man as a custodian to guard the store and the valuables in the store.

Q. Yes.

A. Now, in the first—I took the first assumption, that on any given day a strike hit the stores, deliveries stopped, there were picket lines in front of our stores, employees were unable to come in, and possibly the only person in the store would be our grocery manager. I went on to analyze the expenses of our business and knock out all of the variable expenses which are associated to keeping a store business going, such as the grocery sales, the grocery payrolls, would cease to be required except for the manager's salary.

Transportation costs would be almost completely nothing except for depreciation of our vehicles and the 426 rent of our garage. And there is another factor called, "All other grocery expense", which is primarily supplies, which would cease in such an eventuality.

Q. Well, now, the name supplies doesn't mean much to us out of the trade. What do you mean by "supplies"?

A. Well, bags, meat wrapping paper, and cellophane produce bags. Primarily the wrapping materials which go with the products when they leave the store. So this expense would virtually be zero and there would be no loss even though a strike was in existence on this factor.

Then in the market department I would assume that we would have basically no payrolls to pay, so there would be no loss on market payrolls during such a time period.

"Other market expense," that is primarily market sup-

plies, so we had grocery supplies up above, and now we have market supplies. And this factor would virtually cease, also. And advertising expense, during a strike we would have basically no advertising expense, no promotional expense.

427 Rents are broken down into two factors: Our regular rent, which is a continuing thing and a contingent thing. I picked up regular rent, and a contingent rent based on sales would be virtually non-existent, so I picked up the continuing rent. Depreciation would virtually continue, and so on and so forth.

428 I have analyzed each factor, determining which expenses could be eliminated in the eventuality of the closing of stores.

Now, this is the approach in which we would only have the manager as a custodian of the store.

Now, I don't believe—yes, there is a footnote on this that explains at any given time we have a million, three hundred eighty thousand dollars, approximately, of perishables on hand at any given time. This could probably, or would, most likely, enhance the loss which I have reflected if we could not keep our doors open to sell these perishable products.

Q. All right.

Now, let me take you back to Exhibit 15, if you please. It appears to be in two segments.

You show under the column, "Length of strike," a series of figures, first day, second day, through the seventh day of an anticipated strike?

A. Yes, sir.

Q. From there on you express it in weeks.

429 Now, from what source did you derive the figure "Loss of Sales"?

A. This would be the performance of all of our stores for the first thirty-six weeks of 1962. It is basically an

average of the rate of sales for this year—the first thirty-six weeks.

Q. So that if your average daily sales are one million, one hundred seven thousand dollars—

A. That's right, sir.

Q. (Continuing.) —for the entire chain in this area, excluding Eisner again—

A. Yes.

Q. Is that correct?

A. That's right.

Q. And the next item, "Continuing Expenses," are these expenses that could not be avoided by letting help go, cutting payrolls to the minimum, as you have described, those amounts to \$46,600 a day; is that correct?

A. Yes, sir.

Q. Now, again, the next column, "Loss of Earnings," based upon your average over the first thirty-six weeks of 1962—

A. Yes, sir.

Q. The gross earnings are \$50,100 per day; is that correct?

A. Yes, sir.

Q. That's before taxes?

A. Basically this figure is the end product on the balance sheet, except taxes.

Q. It is before taxes?

A. Yes, sir. Profit and loss statement.

Q. So that what the first line of this exhibit shows is that the first day of the strike, assuming it occurred upon an average day, the company would lose in combined expenses and loss of earnings, \$96,700?

A. Yes, sir.

Q. Now, is that figure for the first day subject to fluctuation, depending on whether it is at the beginning or the end of the week?



A. Yes, sir.

Q. Because the heaviest shopping days are Thursday, Friday and Saturday?

431 A. Yes, sir.

Q. But spread over seven days so that you would get in a 7-day period, the accumulative total that you show there at the end of the seventh day, \$677,200, is a reasonably accurate estimate?

A. Yes, sir.

Q. Now, what assumption did you make with respect to what would happen to the perishable produce, or is it possible to make a completely valid assumption?

432 A. I had gone into great detail breaking down the perishables into dairy products, meat items, delicatessen items, produce items, and because of the perishability of these items, which I had estimated, I found that it was really difficult to find out how much of these dollars we would lose, so I have excluded them from the study.

Basically, about all that could happen is that they would increase these figures.

In other words, if we could keep the store open for another two or three days it is conceivable that you could spend less money by keeping, say, possibly the grocery people on hand and you could possibly minimize the possible additional loss of perishables, which I found very difficult to fairly estimate. There is a lot of conjecture in this factor.

Mr. Christensen: If it please the Court, I offer the exhibit in evidence, and with this caveat to it or admission from it, that is impossible to make a completely accurate prediction, accountingwise, of a strike that has never  
433 occurred, because there are many variables in the situation, and no one can tell in advance precisely what conditions will be or precisely what the losses will be.

But we offer this as reasonable estimate that any man might make, and it is offered not to prove that it is precisely correct accountingwise, but to support our allegation that the threat of a strike that would shut down this chain, with competitors operating, is a very substantial threat, and to show why it is we feared that threat.

The Court: Do I understand that the loss you estimate of loss attributable to the perishables is not included?

The Witness: That's right, sir.

The Court: (Continuing.) Because of the difficulty in estimating—

The Witness: Yes, sir.

The Court: (Continuing.) What it would amount to?

434 The Witness: Yes, sir.

The Court: So it is not included?

The Witness: That is correct.

Mr. Dunau: May I have the witness for a few moments on voire dire, your Honor?

The Court: Yes.

*Recross Examination by Mr. Dunau.*

Q. Mr. Brodnicki, on the 7th day you show a loss of sales of \$1,108,000, correct?

A. That's right.

Q. Why did you increase it by \$1,000 over the 6th day?

A. To tie back to the average of 36 weeks. I had to—it is primarily an accounting technique, to, if you were to add down these seven figures, it would add down to the week's average. I probably would have been more accurate to spread it in.

Q. Mr. Brodnicki, either the first day or 7th day is going to be a Sunday, isn't it?

A. It is hard to tell which one of these days would  
435 be a Sunday.

Q. But you can't count seven days loss on sales. You don't have any sales on Sunday to speak of, do you?

A. We have the two stores open on Sunday. But I think the problem in developing such a tool is the fact that you don't know which of the seven days was a Sunday, and these figures are actually low—I have taken a full week which had \$7,750,000 of sales, and I have divided it by seven. So actually these figures are spread over seven days, and I think you agree they wouldn't happen evenly over those days.

Q. Well, they couldn't happen at all on Sunday, could they?

Mr. Christensen: The store is open on Sunday.

By Mr. Dunau:

Q. That couldn't happen at all on Sunday, could they, Mr. Brodnicki?

A. Yes, we could have a loss of sales.

Q. You couldn't have \$1,107,000 loss of sales on Sunday, could you?

436 A. No, sir.

Q. How many stores do you have open on Sunday?

A. I couldn't say. I could estimate.

Q. Well, estimate, then.

A. Fifteen.

Q. Fifteen stores open on Sunday. And what are their sales on Sunday?

A. I wouldn't know.

437 Q. You have also indicated a loss of earnings before taxes of \$50,100, correct?

A. Yes, sir.

Q. What is your tax rate?

A. Approximately 52 per cent.

Q. So we reduce that by 52 per cent, don't we?

A. This is a hard thing to—generally most of the work

we do for any decision would be before taxes, and it is "which comes first, the chicken or the egg" on these things.

Q. Well, you are not going to lose \$50,100 on earnings if 52 per cent of that is going to go on taxes, anyway, are you? You are not going to pay taxes on earnings you haven't made?

A. It is a—this comes up in many accounting questions, not only this one but other firms, which figure to use, I might mention.

Q. Well, if you try to figure how much money you are losing, you can't be losing money that you are not going to be giving away. If you were earning \$50,100 on that first figure you would be giving 52 per cent to the Government, wouldn't you?

A. I would agree that you could support the other view, yes, sir.

438 Q. Well, how could you support any other view, Mr. Brodnicki?

A. In this instance possibly a \$25,000 figure, for the sake of this estimate, would probably be more accurate. I think I tend to agree.

Q. Yes, you would agree, Mr. Brodnicki, you would have to reduce your loss of earnings by the 52 per cent you were going to give to the Government, in any event.

You indicated under "other losses", one, that there were certain losses that you could not estimate because they were perishables. Are you familiar with the fact that ordinarily a Union gives some advance notice of a strike?

Mr. Christensen: I will object to that.

The Court: Oh, I think that is proper. Overruled.

By Mr. Dunau:

Q. Are you familiar with that, sir?

A. From my understanding I think there are—from my knowledge of it I think there are degrees, from what I have heard, so you might have a complete shut-down

439 or notice; I think there is a variety of situation which could transpire.

Q. If you were to be given three days notice of a strike couldn't you take care of your perishables?

A. I am sure you could minimize your losses.

Q. So the assumption is that the Union won't give you an advance notice of a strike?

A. This is primarily why I put it in a footnote. It depends on the amount of notice, which is purely conjectural.

Q. Now, your second footnote is purely hearsay, is it not, sir?

A. Merchandisers have told me that this is true, which probably is.

Q. Opinions, just hearsay, you don't know about it yourself?

A. I have seen a lot of—I have read about things of this sort in the paper, whether they affect our industry or other industries, and this does seem to be a common trend, from what I have seen. I couldn't specifically give you statistics, but I have read of this in various things.  
440 I would hate to have you pin me down to what. I have probably seen a half dozen notes of one sort or another making similar type statements.

Q. You are basing this footnote two, then, what you read elsewhere and on what people told you?

A. Common knowledge, I guess.

Q. How many years have you been with Jewel Tea?

A. Nine years.

Q. Has Jewel Tea ever experienced a strike?

A. I think we have had some degrees of strikes, picketing and things.

Q. Where, sir?

A. I would hate to say for sure, but I believe it was in the Indiana area.



Q. And did you make an inquiry to determine whether after the strike in the Indiana area you had lost the customers that you had before the strike?

A. Yes.

Q. And did you lose the customers?

A. Yes, sir.

Q. Whom did you inquire of, sir?

A. I believe there was a Mr. Kozentina or a Mr.

441 Ilika.

Q. And who were they?

A. Division managers who were over those stores at the time.

Q. What did they tell you?

A. I don't believe I can recall the discussions well enough, except that the factors which were in existence outside the stores did deter people from coming into our stores and it did have an effect on the sales thereafter. I couldn't quote statistics or percentages now.

447 By Mr. Christensen:

Q. Now, Mr. Witness, did you prepare a computation as to the loss of earnings that Jewel has suffered from the last half of 1953, to date, because it has been unable to sell meat, save in 33 of its stores?

A. Yes, sir.

Q. Will you please place that document before you, sir?

A. Yes.

448 By Mr. Christensen:

Q. You are now looking at Plaintiff's Exhibit No. 16, headed "Loss of Profit because Jewel was unable to sell meat at night except in 33 stores", is that not correct?

A. Yes, sir.



Q. The first column is, headed "Store Address," and then follows a list of stores. Why are those stores listed?

A. I excluded the earnings from the study of those stores which had the privilege or that were selling meat at night, let us say. In fact, I have shown the earnings of the stores by years in an attempt to exclude them from the total company's performance.

Q. Your first total figure shows the total annual earnings of stores selling meat at night in each of the various accounting periods referred to in the heading, is that not correct, of this sheet?

A. Yes, sir.

Q. And your next crosswise column bears the caption "Total Company Earnings," and you show—

449 Q. Now, from what source did you derive that figure of \$2,574,912?

A. The two million—I am sorry, I didn't get that.

Q. Following the caption "Total Company Earnings" appears \$2,574,912.

A. This figure came from the company records, which is a summation of all stores.

Q. What does that figure represent?

A. The total earnings from all of the stores that were open during that period of time prior to the last half of 1953.

Q. Now, each of the other figures then across that line give the same information, coming from the same stores?

A. Yes, sir, in each case, except the last one refers to—that is for the full year.

450 Q. They are for the periods indicated at the top of the sheet?

A. Yes.

Q. Now, your final column, your final line, as I read it,

says "Total Annual Earnings of Stores not selling meat at night" and the first figure is \$2,561,714.

A. Yes.

Q. How did you arrive at that figure?

A. This was including the stores selling meat at night out of the company's performance.

Q. That is deducting the 13,198 from the two million five?

A. Yes.

Q. And are each of the other figures shown in that last line similarly prepared?

A. Yes, sir.

Q. By deducting the earnings of stores selling meat at night from the total company earnings?

A. That is correct.

Q. Now, will you explain to the Court how you arrived at your written statement "Damages to Jewel by not being allowed to sell meat at night", \$110,940,000, the 15.451 per cent equals \$17,084,814, and will you explain that calculation to the Court?

A. Well, the \$110,000,000 figure is the earnings for this time period covered of all of our stores excluding those that were able to sell meat at night, as indicated above, and the 15.4 per cent is the figure which we developed from the study, which I had explained this morning, showing the effect on our nine-store survey, and multiplying that ratio times the \$110,000,000 of profit, you come up with the effect of what—the effect of what it may have had on the nine stores related to the Jewel Company during those years covered.

Q. Now, Mr. Witness, I place it upon the easel, Plaintiff's Exhibit 13, and I do not see on there any figure of 15.4 per cent.

Will you explain how you derive the 15.4 per cent from that?

A. That is a comparison of the company's figure on the bottom.

Q. Will you please step over there and point it out with your finger?

A. Down there, as I explained before, the company 452 had a 7.7 per cent increase in the before and after situation, and these nine stores, in the before and after situation, had a 23.1 per cent increase, and the 15.4 per cent is merely subtraction of the two to find out what effect this would have had on the company.

Q. Now, are there any reasonable or likely adjustments that can or should be made in that \$17,000,000 projection, either upward or downward?

A. I saw one problem which you mentioned.

This is based on an assumption that all of our stores would take advantage of selling meat at night, and I found out later, through the man who has headed up the meat operations, that there are probably about 16 stores which, because of their small size, would not at least one night a week sell meat at night, and so I took the volume of the 16 stores and related it to the company's performance, and found that for the year 1961 that it was 2 per cent of the total, so that these figures should be discounted by approximately 2 per cent, assuming that these stores would not have the advantage of this increase of selling meat at night.

453 Q. If you discount the \$17,084,814 by 2 per cent, what would your figure be?

A. \$16,700,000.

Mr. Christensen: I will offer the exhibit into evidence.

Mr. Dunau: May I have the witness, your Honor?

The Court: Yes.

*Recross Examination by Mr. Dunau.*

Q. Mr. Brodnicki, looking at 950 Aurora, which is the thirteenth store from the top of the listing.

A. Yes, sir.

Q. It says "This store was opened on June 17, 1954, and started selling meat at night on January 1, 1958", and you have excluded from your computation its sales for 1953 to 1956, have you not?

A. Did you say sales?

Q. Yes, have you excluded—I am sorry, your earnings for that period?

A. Yes, sir.

Q. You have excluded the earnings?

A. Yes.

454 Q. What is the assumption upon which you base that exclusion of earnings?

A. That store did not sell meat at night.

455 Q. Do you know whether you were free to—whether Jewel Tea was free to sell meats at night at that time?

A. All I know is they didn't, to the best of my knowledge, sell meat at night.

Q. Well, they didn't, but does that add up to a didn't which is attributable to any lack of—any prohibition upon selling meat at night?

A. I don't understand.

Q. Isn't it entirely possible that Jewel Tea for that period just did not choose to open the store at night?

A. I think you would have to ask somebody other than myself for that answer.

456 Q. Mr. Brodnicki, look at 515 Geneva store, which was open on April 1, 1954, and which began selling meat at night on January 1, 1958.

A. Yes, sir!

Q. You have excluded the earnings of that store for the period between 1954 and '58, is that correct?

A. Yes, sir.

Q. Do you know whether, during that period of time, there was an agreement in effect which prohibited Jewel Tea Company from selling meats at night?

A. I do not know the exact nature of anything that prohibited us from selling meat.

Q. The answer is, you do not know?

A. I do not know specifically.

Q. Look at 368-Elgin store, sir, which is the seventh from the top, which was opened on March 25, 1954, and which started selling meat on January 1, 1958.

457 Q. Do you know of any agreement with a Local Union who is a defendant in this case which, for that period of time, prohibited Jewel Tea from opening those stores at night, if it chose to?

A. I am afraid it would have to be the same answer.

Q. You do not know, is that correct?

A. I am not specifically sure.

Q. Mr. Brodnicki, you used a figure of 15.4 per cent, which you now have reduced, as I understand it, to 13.4 per cent as the basis upon which you are determining the loss to Jewel Tea from not operating nights in the Chicago area, is that correct?

Mr. Christensen: I object to the question. The witness did not testify that he reduced 15.2 per cent to 13 per cent.

Mr. Dunau: I thought he said—

By Mr. Dunau:

Q. Would you tell me what you reduced the 15.4 per cent by?

A. I didn't reduce that figure at all.

Q. Did you say, Mr. Brodnicki, that the \$17,084,814 figure should be reduced to \$16,700,000?



458 A. Yes, sir.

Q. On what basis did you make that deduction?

A. On the opinion of a man who heads up this part of the operation who felt that we probably wouldn't take advantage of the night openings in one hundred per cent of our stores, that there would be a very few small stores which would very possibly be excluded.

It amounted to—the volume of these stores amounted to 2 per cent of the seventeen million.

459 Q. It amounted to two per cent, is that correct? Is that what you told me?

A. Yes, sir.

Mr. Christensen: Of company volume, which is different from two per cent taken from a 15 per cent differential.

By Mr. Dunau:

Q. Mr. Brodnicki, the 15.4 per cent you got was from subtracting 7.7 from 23.1, as it appears on Plaintiff's Exhibit 13, is that correct?

A. Yes, sir.

Q. And using 23.1 per cent, are you assuming that the entire increase in the profit for those nine stores is attributable to night opening?

A. I feel there are a lot of factors, and this was a fair before and after situation in which this factor was underlying in each of them, and it was a basis for a judgment.

Q. Mr. Brodnicki, taking that 23.1 per cent, as I understand you, night-operating hours is one factor which  
460 goes to make up the 23.1 per cent, is that right?

A. Not in the sense you have worded it now. This is a summation of these stores, and in the summation I think this one factor which is more common to all of them, now tends to be the measurable difference. It tends to differ from taking an individual store and now taking the group as a total.

Q. Mr. Brodnicki, 23.1 per cent represents the increase,



does it not, of the total store earnings from \$1,315 to \$1,618, for these nine stores, is that correct?

A. Yes, sir.

Q. And you are assuming that the entire increase from \$1,315 to \$1,618 is due to an expansion of marketing hours, are you not, sir?

462 A. I would say that in taking the total of the stores, that because each of these stores has this underlying effect, that this bottom figure of 23.1 per cent is a much better measurable figure of the effect of this one particular factor, which was common to each of the stores.

463 Q. Is your answer yes or no, Mr. Brodnicki?

A. That would be difficult to answer, specifically, yes or no.

Q. Well, are you or are you not assuming that the whole increase is attributable to an expansion of marketing hours?

A. I would say that it is a—I wouldn't necessarily say—it could be more or less, but on the average now, it is a—

Q. Please, yes or no? Are you assuming that it is all attributable to marketing hours, or are you not assuming that?

A. I would have difficulty answering that question without qualifying it. I couldn't say a definite yes or no.

Q. You know, do you not, Mr. Brodnicki, whether  
464 you have assumed it is all attributable to marketing hours or it is not? You have to make one or the other of the two assumptions there is no inbetween.

Now, did you assume it was all attributable to marketing hours, or did you not?

A. I don't mean to be evasive, but if you will let me give you the answer without a yes or no, maybe I could—

Q. Would you please give me yes or no, and then you

can explain it, so far as I am concerned, as much as you please.

A. On the average of the nine stores, I would say the 23.1 per cent tends to point out what effect this night operation had on sales of meat.

Q. Mr. Brodnicki, are you or are you not attributing the whole of that 23.1 per cent to an expansion of operating hours? Yes or no.

A. The answer is a conditional yes.

465 Q. What does "a conditional yes" mean?

A. With the qualification I have offered.

Q. What is the qualification you have offered?

A. I have said it several times.

Q. Would you please state it again, then?

A. In my judgment that if you were to take nine stores and compare them in the one year previous to a change and the one year after a change, that if you were to compare various indicatives which made up their operating performance, and that if you were to then average their performance, that the underlying net effect would show you the effect of what this one underlying factor is in most part.

Q. Mr. Brodnicki, let's see if we cannot get at it another way.

As to any one individual store, are you prepared to say that market operating hours are only one factor which would contribute to an increase in volume to sales?

A. Yes.

Q. As to any one store marketing operating hours are only one factor, correct?

466 A. That's correct.

Q. What are the other factors as to any one store?

A. Competition, our promotions at the time, our management, our people, probably chance. There are many, many underlying factors which could affect the sales of a store.

Q. All right.

Now, when you multiply one store by nine stores, do these other variables disappear from the picture?

A. No, sir.

Q. So you must take into account all the variables you have just listed in determining whether an increase in volume is attributable to market operating hours or to market operating hours plus something else, is that correct?

467 A. Yes, and they would tend to net themselves out when you take an average.

By Mr. Dunau:

Q. Br. Brodnicki, 23.1 per cent would then indicate an expansion of market operating hours, competition, better people, efficiency, chance, is that correct?

A. I cannot answer that the way you phrase it,

468 Q. Mr. Brodnicki, let's try it once more:

Does 23.1 per cent increase include factors in addition to market operating hours?

A. Yes, sir.

470 [Session of Friday, October 26, 1962.]

Q. Mr. Brodnicki, at the conclusion of this session yesterday, we had these questions and answers, and I will repeat them to you so we can take up from there:

"Q. Mr. Brodnicki, let's try it once more. Does 23.1 per cent increase include factors in addition to market operating hours?

"A. Yes, sir.

"Q. It does?

"A. Yes, sir."

Mr. Brodnicki, since factors in addition to market operat-

ing hours are included in the figure 23.1 per cent, 471 how do you determine how much of that 23.1 per cent should be attributed to marketing hours and how much to other factors?

A. By comparing the performance of these stores which have the granted privilege, take advantage of the privilege of selling meat at night, and by determining before and after performance, it is possible to compare this performance with the company performance, which excluded this privilege; and the difference between the two figures of 15.4 per cent would be the effect of selling meat at night as to how it would benefit earnings.

Mr. Christensen: I don't understand that, the difference between which two figures?

The Witness: The difference between 23.1 per cent, the increase of these nine stores, compared to the company performance of 7.7, would be the effect of this performance on earnings.

Mr. Christensen: You are referring to the last figures at the foot of Plaintiff's Exhibit 13?

472 The Witness: Yes, sir.

By Mr. Dunau:

Q. You are stating, then, Mr. Brodnicki, that all other factors you would account for by giving them a value of 7.7 per cent?

A. Yes, sir.

Q. The Michigan City store, which is Item A-4, now company Exhibit 13-H, shows an increase of 110.3 per cent; is that correct, sir?

A. Yes, sir.

474 Q. Does the Michigan City store show a 110.3 per cent increase in the year of operations after the expansion of marketing hours?

A. Yes, sir.

Q. Do you deduct from 110.3 per cent, sir, 7.7 per cent?

A. I don't understand what you mean.

Q. Is this 7.7 per cent of the 110.3 per cent attributable to factors other than market-operating hours?

A. I haven't done that on this work sheet that way.

Q. Is that the premise upon which the study was based?

A. No, sir.

Q. How do you determine, of this 110.3 per cent, how much is attributable to market-operating hours and how much to other factors?

476 A. Well, I think it actually depends on the people in that community, and how receptive they were to this proposition. It could be a figure of 15.4 per cent, or it could be a figure above or below in that situation.

There are other factors operating which can affect the earnings of the store, and to the extent as to what the specific figure in the store is, I could not state.

477 Q. Is your answer then, sir, as to the Michigan City store, that you do not know how much of the 110.3 per cent is attributable to marketing hours, and how much to other factors?

A. I would say that it would be difficult to pin-point the precise percentage.

Q. Is your answer that you do not know, sir?

A. I do not know the precise figure.

Q. And you would not know how much is attributable to marketing hours, and how much is attributable to other factors in every one of the other eight stores in the group that that covers, is that correct?

A. No, sir.

Q. That is not correct or that you do not know?

A. Would you restate that again.

Q. As to each of the other eight stores, do you know

how much of the increase is attributable to marketing hours, and how much to other factors?

A. In my judgment, I would say that of each of the stores there was in effect 15 per cent, plus or minus, you see, a few degrees operating on each of the balance of those stores, plus other factors.

478 Q. Would you look at your Item A-2, Mr. Brodnicki, the 341-Joliet store?

A. Yes, sir.

Q. Does that show a 61.8 per cent increase in earnings in the year after the market-operating hours at night were expanded?

A. Yes, sir.

Q. How much of that 61.8 per cent is attributable to market-operating hours, and how much to other factors?

A. I couldn't say, precisely.

Q. If I went through each of the stores, your answer would be "I couldn't say precisely," is that correct?

A. I could venture a judgment prediction.

Q. You could venture a guess?

A. Yes, sir.

Q. Thank you.

A. I didn't say "guess," I don't believe, sir.

Q. Is it a guess?

A. No, sir.

Q. What is it based on?

A. My judgment.

479 Q. What is your judgment based on?

A. The findings of the study.

Q. Of the study?

A. Yes, sir.

Q. Mr. Brodnicki, there are thirty-three stores in which night operation is permitted, is that correct?

A. Yes, sir.

Q. Nine stores you were able to find in which there was an expansion of night-operating hours, is that correct?



A. Yes, sir.

Q. Twenty-four stores, then, had no expansion of night-operating hours?

A. That is correct.

Q. But they had night-operating hours?

A. That is correct.

Q. Did you make a study to determine in those twenty-four stores whether any store had an increase in, during any of the periods that you have covered in your study, of 110 per cent?

A. I have seen some figures of the other stores, 480 and I cannot recall the specific performance as to what they did over a period of time. I couldn't quote them precisely.

Q. Do you recall—

A. I know some went up and some went down.

Q. Mr. Brodnicki, in the stores in which there are 481 not night operations, did you make a study of the increase in earnings in individual stores on that group?

A. This would be the balance of the company, other than the thirty-three?

Q. That's correct, sir.

A. It was primarily done in total, the total performance. I didn't get involved in individual stores for this purpose.

495 Q. Mr. Brodnicki, on Plaintiff's Exhibit 16 for identification, which is this document which purports to state the extent of the losses, will you take a look at it, please?

A. Yes, sir.

Q. You have the figure 15.4 per cent with an "A" encircled above the figure, is that correct?

A. Yes, sir.

Q. Then you have an "A" encircled on two lines below that line, is that correct?

A. Yes, sir.

Q. And then you say the 15.6 rate was obtained, is that correct?

A. It should have been 15.4.

Q. That is a mistake then? That should have been 15.4?

496 A. Yes, sir, that should be the same figure.

Q. Mr. Brodnicki, on total company earnings, which you have as \$116,000,000 plus dollars, is that before or after taxes?

A. Before taxes.

497 By Mr. Christensen:

Q. You were asked upon the examination just concluded as to whether in preparing Exhibit 13, which shows the 15.4 variation, or yields the 15.4 variation, you took into account in the nine stores the fact that meat prices might have gone up or that operating—that wages might have gone up or down in the nine stores, and you answered that you did not take into account or separately evaluate those items?

A. That's correct.

Q. Now, in showing the company comparable figures for the company, did you take into account in determining these percentages in the company performance whether wages had gone up or prices had gone up?

A. No, sir.

Q. So that whatever variation in prices or expenses there may have been are reflected both companywide and in the nine store area?

A. That is correct.

498 Q. Now, with respect to Exhibit 16, in showing the periods, the Exhibit shows you were asked as to whether store Aurora 15, 368-Elgin, 515-Geneva, and 950-Aurora, in which you did not exclude the earnings of those stores in the years '54, '55, and '56, whether night sale of meat was permitted in those particular stores. You were asked questions to that general effect yesterday. Do you recall that?

A. Yes, I do.

499 Q. According to company records and information relied upon, in the usual course of business, were you permitted, under your union contract, to sell meat at those stores at night during those periods?

A. No, sir.

500 *Recross Examination by Mr. Dunau.*

Q. Mr. Brodnieki, with respect to the four stores 501 that Mr. Christensen asked you about, you said you have read the union agreements for the period.

A. I have looked at considerable agreements, and I believe I specifically saw this in writing, but I base my judgment as to the way—for this particular work sheet, rather, upon the judgment I received from Mr. Vorbeck.

He had read the contract and explained to me that our stores were prohibited from selling meat during—that in our contract our stores were prohibited from selling meat during these time periods.

Q. And you did not read the agreement yourself?

A. I could not recall specifically whether I saw this one, or not.

Q. Then your basis, for excluding the earnings for those stores, is on what Mr. Vorbeck told you, is that it?

A. I would say primarily—well, I would say yes.

502 EDWARD T. VORBECK, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you please state your full name, sir?

A. My name is Edward T. Vorbeck.

Q. Where do you live, Mr. Vorbeck?

A. 512 Dundee Avenue, Barrington, Illinois.

503 Q. What is your position with the Jewel Tea Company?

A. General attorney and assistant secretary.

Q. Are you the same Vorbeck whose name has been mentioned from time to time during this testimony in conducting labor negotiations for the Jewel Company the last several years?

A. I am.

Q. Were you personally familiar with whether you were able to sell meat at night in Aurora, Elgin and Geneva, sir, in the years 1953, 1954, 1956 and 1957?

A. Yes, sir, I am.

Q. What is the fact as to whether, under the contracts that you had negotiated and then in effect, that you could sell meat at night in those stores?

A. They were not permitted to sell any fresh meats at all after 6:00 p. m. in any of those stores prior to the conclusion of the 1957 negotiations.

Q. Which came near the end of the year 1957?

A. That is correct.

504

*Cross-Examination by Mr. Dunau.*

Q. Mr. Vorbeck, let's take the 368 Elgin store.

A. All right.

Q. What collective bargaining agreement was in effect covering the 368 Elgin store?

A. The collective bargaining agreement of Local Union 189.

Q. In what group?

A. Prior to the conclusion of the 1957 negotiations, they were in what was known, I believe, as Group 1, where night operations or the night sale of meats were not permitted.

Q. And what happened in the '57 negotiations?

A. The 1957 negotiations concluded with a setting apart of all of Kane County as a new group, 1-A, in which night sale of meat was permitted.

505 Q. 515-Geneva, sir, what agreement covers the 515-Geneva store?

A. That of Local 189.

Q. And what you have said with respect to 368-Joliet, does that apply also to 515-Geneva?

A. That is correct.

Q. The 950-Aurora store, what collective bargaining agreement covers that store?

A. Local 189.

Q. All the same answers that you have given to 950-Aurora, sir?

A. 950-Aurora?

Q. Yes, sir.

A. Yes, they are.

506 JACK R. WILLIAMS, a witness called on behalf of the plaintiff herein, being first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you state your name for the record, please?

A. Jack R. Williams.

Q. Where do you live, Mr. Williams?

A. 1011 Cherry Street.

Q. Do you work for the Jewel Tea Company?

A. Yes, I do.

Q. 1011 Cherry Street, and I forgot to ask you what town?

A. That's Hammond.

Q. Hammond, Indiana?

A. Yes, sir.

Q. How long have you worked for Jewel?

A. Approximately six years, part time and full time.

Q. What is your present position?

507 A. I am the Assistant Manager or Night Manager at 7240 Calumet, Hammond.

Q. When do you normally come on duty, what time of day?

A. One-thirty.

Q. In the afternoon?

A. Yes.

Q. And you remain at the store until what hour?

A. Eleven o'clock.

Q. What is the fact as to whether meat, fresh meat, is sold from your self-service counters in your store Monday, Tuesday and Wednesday nights without any butcher being in attendance?

A. This is true.

Q. That is true, is it not?

A. Yes.



Q. From six o'clock on, you are in charge of the entire operation of the store, are you?

508 A. Yes.

Q. Have you made an observation as to the ratio or proportion of meat sales with reference to grocery sales in your store before six o'clock and after six o'clock on these evenings, during which no butcher is in attendance?

A. Yes, I have.

Q. And in general do those ratios remain the same, or do they vary?

A. In most instances they remain the same. Sometimes it is a little higher, sometimes a little lower.

Q. Will you tell the Court what the condition of the self-service cases are at the end of the evening with respect to cleanliness or whether they are in disorder, or do you have any trouble with respect to the vending of meat from self-service cases without a butcher in attendance?

A. I have never had any problems with customers, as far as meat that is on hand.

As far as the cleanliness, I believe it is the same as during the day.

As far as the order, I believe it also would be the same as during the day.

509 Q. That is your observation?

A. Yes, sir.

Q. And how long have you been the Night Manager in this store?

A. Almost a year at this one.

*Cross-Examination by Mr. Dunau.*

Q. Mr. Williams, how many nights a week does the meat department operate in the store that you presently supervise?

A. Six nights.

Q. Do you have a butcher on duty on Thursday night?

A. Yes.

Q. How many?

A. One.

Q. Friday night; how many?

A. One, and sometimes two, I believe.

510 Q. Saturday night?

A. None.

Q. None on Saturday night?

A. No.

Q. Do you inspect the cases during the course—the counters in the Meat Department during the time that a butcher is not on duty?

A. Yes.

Q. Do you, if you see a package in a wrong place, pick it up and put it in the right place?

A. I don't believe I have ever found it necessary.

Q. You mean in your experience a housewife who has picked up a package of hamburger has never put it down in the place where a package of steak is normally kept?

A. Not that I could recall.

Q. And in your experience a housewife who has picked up a poultry package has never put it back any place but the place you keep poultry, is that correct?

A. Not that I can recall.

511 Q. They always put it back in the same place they pick it up, is that it?

A. I believe the customers are very good about that.

Q. And the package is never torn, is it, sir, between six and nine when a butcher is not on duty?

A. I couldn't say definitely; not that I have—

Q. You have never seen a package torn, is that correct?

A. I do not believe so.

Q. You don't believe you have ever seen a package torn, is that right?

A. No.

Q. You have never seen a package torn?

A. No.

Q. And you have never run out of a particular variety of meat between six and nine, when a butcher is not on duty?

A. That I cannot say. If we have, that's never 512 been brought to my attention.

Q. And you, personally, have never gone into a cooler between six and nine and replenished the stock in the cases by taking out a piece of meat that was in the cooler and putting it in the counter, is that right?

A. Right.

513 ROY McKNIGHT, called as a witness on behalf of the plaintiff herein, being first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you please state your name for the record?

A. Roy McKnight.

Q. Where do you live, Mr. McKnight?

A. 3527 43rd Place, Highland.

Q. Highland?

A. Pardon?

Q. I did not get the place.

A. Highland, Indiana.

Q. Highland, Indiana?

A. Yes.

Q. You are employed by the Jewel Tea Company, are you not?

A. Right.

Q. In what capacity?

A. Assistant Manager or night Manager.

Q. In what store?

A. Just this week I was transferred to Hobart,  
514 661 Hobart.

Q. Before this week where did you work?

A. 4501 5th Avenue, Gary.

Q. 4501 5th Avenue, Gary, Indiana?

A. Right.

Q. And you were there how long?

A. Roughly, two and a half years.

Q. Is that store open for the sale of meat at night?

A. Right.

Q. From self-service counters?

A. Right.

Q. What is the fact as to whether in that store you  
have a butcher in attendance—had a butcher in attendance  
each night the store was open?

A. I don't quite understand.

Q. Well, did you have a butcher in attendance every  
night the store was open for the sale of meat?

A. No.

Q. Which nights did you have butchers in attendance?

A. Thursday and Friday.

Q. And it was open how many nights?

515 A. Every night; six nights.

Q. Six nights?

A. Yes.

Q. Every night except Sunday?

A. Right.

Q. Did you, during the time you were in that store  
on these—you were there nearly every night, I take it?

A. Five nights a week.

Q. And that would include the nights when no butchers  
were there?

A. All the nights the butchers weren't there.

Q. Did you ever receive any complaints from customers

as to the service—over the condition of the meat tables or self-service counters?

A. No, not that I recall.

Q. State in general what you observed the condition of those meat self-service counters to be with respect to cleanliness and availability of meat products during the nights butchers were not in attendance?

A. What I could see, good.

Q. Now, in that store, the Gary store, was there 516 any appreciable variance between the ratio of meat sales to grocery sales in the daytime, as opposed to the nighttime when butchers were not in attendance?

A. No. It would just fluctuate within one or two percentage points, either up or down.

*Cross-Examination by Mr. Dunau.*

Q. How many butchers are on duty Thursday night?

A. One.

Q. Friday night?

A. One, I believe.

Q. Have you ever cleaned the meat counter on nights that a butcher was not on duty?

A. No.

Q. Have you ever found a package of meat where the cellophane was broken?

A. No.

Q. Have you ever found that the—that a housewife took a package of hamburger, picked it up, didn't want it 517 and put it down in the place where the steaks should be?

A. I don't believe so.

Q. You have never found a housewife who picked up a poultry package, didn't want it and put it down where

the steaks should be, or some other place where it shouldn't be?

A. No.

519 KENNETH D. SMITH, a witness called on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you please state your name?

A. Kenneth D. Smith.

Q. Where do you live, Mr. Smith?

A. Batavia, Illinois.

Q. Are you an employee of the Jewel Tea Company?

A. Yes, sir.

Q. Are you a member of the Amalgamated Meat Cutters and Butchers Workmen of North America?

A. Yes, sir.

Q. What local?

A. 189.

Q. And you work as a butcher for Jewel?

A. Yes, sir.

Q. In what store?

A. 515-Genova.

Q. Do you have any objection to working nights, so long as you are paid time and a half?

520 A. No, sir.

Mr. Christensen: You may cross-examine.

Mr. Dunau: No questions.

The Court: That's all.

(Witness excused.)

Mr. Christensen: Your Honor, I have here under subpoena ten additional butchers, members of either Local 189 or the local that covers the Hammond, Indiana, area.



All of them, I believe, are prepared to give the identical testimony.

In view of counsel's failure to cross-examine the gentleman we just had on the stand, I wonder if you would stipulate with me that if they were called, they would give testimony identical or closely similar to that of the last witness, Mr. Smith?

Mr. Dunau: May we consider that for a moment, your Honor, and may we have the identification of the persons that you would call?

Mr. Christensen: Here you are.

Mr. Dunau: Mr. Christensen, if you will identify the name of each of the persons and the location of the 521 store in which they work, we will stipulate that if they were called as witnesses, they would testify in the same fashion as the individual who has just completed his testimony.

. . . . .

523 VERNE B. CHURCHILL, a witness called on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you state your full name?

A. Verne B. Churchill, Jr.

Q. Where do you live, Mr. Churchill?

A. 1035 Long Acre Road, Northbrook, Illinois.

Q. What education have you had?

A. What was the—my further education?

Q. Yes?

A. I have a Master's degree from Indiana University and a Bachelor's from Ripon College in Ripon, Wisconsin.

Q. A Bachelor's from Ripon?

A. Yes.

Q. And a Master's in what from Indiana University?

A. In business administration.

Q. By whom are you presently employed?

A. Market Facts, Incorporated.

Q. What is the business of Market Facts?

524 A. It is a market research company...

Q. Where is it located?

A. 100 South Wacker Drive, Chicago, Illinois.

Q. Will you describe briefly for the Court what a market research company does?

A. At the risk of over-simplification, a market research company is in the business of obtaining information which will lead to marketing decisions by manufacturers, advertising agencies, and other sponsors of research studies.

Q. How long have you been employed by Market Facts, Incorporated?

A. Over three years.

Q. Before that, by whom were you employed?

A. The Parker Pen Company, in their Research Department.

Q. In the Research Department?

A. Yes, sir.

Q. And what title do you bear presently with Market Facts?

A. Study Director.

525 Q. Study Director?

A. Yes.

Q. Were you requested by counsel for the Jewel Tea Company recently to ascertain facts with respect to shopping preferences and habits of consumers in the Chicago area with respect to the purchase of foods and meats?

A. Yes, with one exception.

At the time of the request, I was not aware of the fact that you were counsel for the Jewel Tea Company.

Q. But you were requested?

A. Yes.

526 Q. And did you in consultation with others in your organization work out the conditions for such a study?

A. Yes, sir.

Q. And was it conducted under your supervision?

A. Yes, sir.

Q. Is the Plaintiff's Exhibit 17 your report and evaluation on such a study?

A. Yes.

Q. Now, will you turn to the back of the—no, first will you please tell how you constructed or selected the sample, or I believe the term my esteemed and learned opposing counsel uses is the universe, which was to be sampled?

A. We defined the universe to be sampled as the telephone-owning homemakers in Chicago and in immediately surrounding suburban communities.

527 Q. Did you make a decision as to approximately how many to sample in Chicago and how many to sample in the surrounding communities?

A. Yes.

Q. And how did you determine how you would divide it between Chicago and the surrounding area?

A. Quotas were assigned essentially proportionate to the distribution of population in Chicago as against its surrounding communities. That is, roughly, 50-50. This was the quota assignment. The actual result composition was 54.5 per cent of the respondents were located within the city limits of Chicago or sampled from the Chicago directory; 45.5 per cent sampled from non-Chicago directories.

This—if I may make another point.

Q. Go ahead.

A. According to the Census Department the distribution of Chicago v. the remainder of Cook County is about

60 per cent in Chicago and 40 per cent for the suburban communities outside of Chicago in Cook County. This is approximately the distribution within one per cent, let's say.

528 Since we were concerned only with telephone-owning households, which, according to the Illinois Bell Telephone Company, telephone penetration is higher in suburban communities than in Chicago proper; in our judgment, the roughly 55-45 split between Chicago and the suburbs is a fairly accurate division of the sample in terms of telephone-owning homemakers in these two areas.

Q. All right. Now, how was the survey actually conducted?

A. Interviewers on a regular staff were recruited to perform the study. Seven of these interviewers were located in suburban communities outside of Chicago; seven were located within Chicago. Quotas were established to approximately 50-50 Chicago v. suburban.

These interviewers were phoned by our field department and asked if they were available to participate in this study.

Q. Was each interviewer furnished with a series of—what do you call these, questionnaires?

A. Questionnaires, that's right.

529 Q. (Continuing.) Questionnaires, that appear as an exhibit to your report.

A. Yes, each one was furnished with a number of questionnaires slightly in excess of the quota of completed interviews as well as written instructions, both in terms of the study in general and in terms of sampling of respondents, and a call record sheet.

Q. Were they given the written instructions that appear on the blue sheet in the exhibits to your—

A. Yes.

Q. (Continuing.) —report?

A. Yes, sir.

Q. And the document had its sampling instructions, which also appears as an exhibit to your report?

A. Yes, the sampling instructions differed slightly with each interviewer, according to the random selection of starting points in the directory used by that interviewer.

Q. Yes, but each one—

A. Had a blank, that's right.

Q. Had a different letter or a different place—

A. Yes.

530 Q. (Continuing.) —to start in the telephone book?

A. Yes.

Q. After the interviewers made their calls, what did they do?

A. When they completed their calls?

Q. After they completed their calls and filled out their questionnaires?

A. On Monday night and also on Tuesday night—that is October 22nd—and last Monday night and last Tuesday night they returned their questionnaires. The manner in which these were returned, we selected three or four interviewers located centrally among the group of interviewers, and then they all pooled their questionnaires.

Q. They collected them and brought them downtown?

A. That's right.

Q. And someone in your organization then tabulated the results?

A. Yes. The questionnaires were then numbered and submitted to key punch operations in the Hayes Statistical Service. These—the answers—the questionnaire was  
531 a completely structured one which did not require any coding, that is, any interpretation of answers on the part of our Coding Department. The answers were all self-evident and could be given right to a key punch operator.

The data were then punched on IBM cards, and returned to our office. The tabulation of these questionnaires, according to a tabulating plan I had developed, was accomplished through our IBM Department on Tuesday morning.

Q. That resulted in what page of your report?

A. Excuse me, that was on Wednesday morning.

Q. And what resulted in what page of your report?

A. That resulted in all of the pages numbered—table numbers 1 through 10, comprising eleven total pages in the report.

Q. And those pages are summarized in the summary of key findings?

A. Yes. From the data, excerpts of the data are taken from the tables and summarized on the page entitled, "Summary of Key Findings" and supplemented by other information—

Q. All right, just never mind.

532 Now, on your sheet, "Summary of Key Findings" appears a column headed, "Probable Minimum and Maximum Proportion in Population", and then figures that are spread figures, the first one being 60 to 72 per cent.

A. Yes, sir.

Q. Will you explain that in some detail as to just what you mean by "probable minimum and maximum proportion in population"?

533 A. The 60 to 72 per cent represents what can be considered the probable range of homemakers in the universe sampled who would answer—whose opinion would correspond to the item listed on the page. That is, the first item says: "Normally use automobile for shopping."

One of the first questions asked on the questionnaire was whether they normally use an automobile for their regular



food shopping. Sixty-six per cent of the 422 people in our sample said that they do normally use an automobile for shopping.

Now, those 422 people were sampled from a universe rather than every member of the universe being asked the question; at best the 66 per cent represents an estimate of what the true proportion is in the population. In the absence of a census, i.e., the asking of everybody in the universe of population, you have to work with a sample estimate.

Now, so long as you have got a randomly selected 534 sample, then the laws of probability can operate and you can then arrive at estimates with a 95 per cent level of confidence as to what the upper and lower limits would be in terms of the field of the entire population.

Therefore, we show that 66 per cent of the homemakers in our sample normally use an automobile for shopping. We can then say, because we had a good randomly selected sample, that at least 60 per cent of the homemakers, we can say with a 95 per cent level of confidence, that at least 60 per cent of the women in the universe sampled and possibly as many as 72 per cent of the women in the universe sampled normally use their automobile for shopping.

Is that an explanation of these two columns?

By Mr. Christensen:

Q. In other words, you are saying that the 66 per cent is probably not quite exact, but that as applied to the entire population an affirmative answer to that question will fall in the range between 60 and 72 per cent?

A. Yes.

535 Q. In your judgment as an expert opinion that is correct?

A. Yes.

Q. And the same holds true right down the page, does it not?

A. Yes.

Q. How many opinion surveys of this general nature have you participated in making in your business experience, Mr. Witness? Your best estimate.

A. 150.

Q. And it is the day to day business of your organization?

A. Yes. If it is of any enlightenment our clients—should I mention some of our clients?

Q. If you are at liberty to do so.

A. I think it will help.

Q. Just go ahead.

A. The Ford Motor Company, United States Steel Corporation, Dow Chemical Company, General Foods Corporation, All State Insurance Company, Wilson & Company, Meat Packers, Proctor & Gamble Company.

Q. All right. Have any of the major advertising 536 agencies employed the services of your organization in work of this general character?

A. Yes. As a matter of fact, right now I am working on jobs for Needham, Louis & Brorby, Tatham-Laird, and D'Arcy Advertising Co., here in Chicago.

Q. They are some of the largest advertising agencies in the nation, are they not?

A. Yes.

Mr. Christensen: I will offer the exhibit in evidence, if it please the Court.

*Cross-Examination by Mr. Dunau.*

Q. What is the universe covered by this city, Mr. Churchill?

A. Telephone-owning household, homemakers of the telephone-owning households located in Chicago and in suburban communities immediately surrounding Chicago.

537 Q. How many could that include?

A. Our estimate as to the number of households is 1,280,400.

538 Q. And you were using a survey of 422 people to determine the sentiments of 1,280,400 people, is that correct?

A. Yes, sir.

Q. What is considered a fair sampling of the universe, sir?

A. What do you mean by "fair"?

Q. In order to determine what the sentiments of 1,280,000 people are, how many people do you think you should interview?

A. It depends on what kind of area you want to cover.

Q. Well, let's relate it to the least tolerable area. How many people would you interview to get the maximum of—

A. (Interposing.) 1,280,000.

Q. Then, sir, since we cannot interview 1,280,000, you were asked, as the maker of the survey, to determine it in a feasible way what to do.

A. My original recommendation was 300 to 350, later modified to about 400.

Q. It is your position, then, by talking to 300 to 350 people, that you can find what the sentiments are of  
539 1,290,000 people, is that correct?

A. Within a predictable limit, yes.

Q. And you would not ordinarily use a sampling of more

than about 300 to 400 people in order to determine what 1,000,000's sentiments would be?

A. If I wanted to find out with a greater level of precision, then I would go to more, yes.

Q. But talking about an approximate level of precision, what would you use?

A. Well, you would have to define your term. What I am saying is that if I were—as I have done here, I have designed a study to answer a certain question.

I will recommend a sample size according to the amount of error you can tolerate. Now, the amount of error you can tolerate is the function of a number of things.

Getting back to the one field which we talked about before, we found that 66 per cent of the women said that they normally used an automobile for shopping.

I don't think it is terribly important whether it is actually 63.7 per cent, or whether it is actually 71.7 per cent.

540 I am satisfied, and I think that most marketers would be satisfied in a corresponding question in any marketing study. I think they would be satisfied whether it would be between 60 to 72 per cent who use their automobile for shopping.

Q. But you think you can find that out by asking 400 people in a population of 1,200,000?

A. Yes.

Q. Why did you confine it to the telephone-using public?

A. Because this was an expedient we had to make because the study had to be made in a relatively short time, and there was also a budgetary consideration.

Telephone interviews are handled much more quickly and faster, and for less money, than in personal interviews.

Q. Do people buy meat who do not use telephones?

A. Yes, or as far as I know, they do.

Q. You don't have any doubt about it, do you?

A. No.

Q. Then would the universe properly include, those that you were sampling at the time—it would include those who had telephones and those who did not have tele-  
541 phones?

A. If that were the universe I was sampling, yes. The universe that I sampled were telephoned and they were in households.

Q. But the universe that is relevant, is that universe that uses—

A. (Interposing.) Eighty per cent used telephones.

Q. When were you retained to make this study?

A. Friday, October 20. I believe that is correct—or the 19th.

Q. By whom were you retained?

A. Mr. George Christensen.

Q. Did Mr. Christensen identify to you the purpose for which this study was to be made?

A. He described in broad terms that there was—he, in words, or in substance, rather, told me that—my recollection is that he said that Jewel was involved in a lawsuit, in which they were attempting to be allowed to sell meat after 6:00 p m.

Q. So you knew, when you conducted this study, that it was to be used in a lawsuit in which Jewel sought  
542 to change the rule, as explained to you, as being presently in existence, is that correct?

A. Would you repeat your question?

Q. You knew, when you made the study, that it was going to be used in a lawsuit on behalf of Jewel, did you, in which they were going to try to change the rule in existence with respect to the sale of meat in Chicago?

A. I did not know it was going to be on behalf of Jewel.

Q. You knew that Mr. Christensen represented Jewel, did you not?

A. No.

Q. But you knew it was going to be used by somebody in the lawsuit?

A. Yes.

Q. And you knew that somebody was going to try to change the presently existing rule, did you not?

A. Yes.

Q. When did you start working on the study?

A. Immediately after the telephone call on Friday afternoon.

Q. When did you receive the telephone call on 543 Friday afternoon?

A. About 4:10 on Friday afternoon.

Q. How much time did you devote on Friday, after 4:10, to this study?

A. I would estimate four hours on Friday.

Q. And on Saturday, did you work?

A. Yes.

Q. How many hours did you work on Saturday?

A. I would estimate two hours on Saturday.

Q. That is six hours, and how many hours did you work on Sunday?

A. Approximately four hours on Sunday.

Q. That is ten hours, is that it?

A. That is approximately it, yes.

Q. And what did you do during those ten hours, sir?

A. Designed a questionnaire and consulted with my superior, David Hardin, about it.

Q. Then the shopping survey, the questionnaire, was composed by you within the space of ten hours, is that it?

A. By myself in consultation with my superior, in 544 roughly ten hours of work over a three-day period, yes.

Q. Who gave you the information which was the basis upon which you made this questionnaire?

A. Mr. Christensen.



Q. How long did you talk to Mr. Christensen?

A. Oh, I would estimate that I talked to him in one conversation approximately ten minutes, and then later on that evening, and then again on Friday, for five minutes.

Q. So on the basis of a fifteen-minute conversation, you made up this questionnaire?

A. Yes. Well, no, that is not correct.

On the basis of a fifteen-minute conversation I obtained what I considered to be sufficient knowledge of the issues involved, as far as I had to know them, and also arrived at an estimate of what the study would cost, and what other specifications might be the general sampling design, and what reserves approximately we would use.

Q. Of the ten hours which you devoted to this matter, beginning on Friday, and being concluded on Sunday, how much of that time was devoted to the structuring of this questionnaire?

545 Q. What do you mean by "structuring"?

Q. Making it up.

A. The entire questionnaire design. I would estimate, approximately 65 to 70 per cent of the time.

Q. Six to seven hours?

A. Roughly.

Q. And was your questionnaire then distributed to the girls who conducted the interview on Monday morning?

A. No.

Q. When?

A. On Monday afternoon.

Q. Did you do any work on the questionnaire on Monday morning?

A. Yes.

Q. What did you do?

A. I took it to Mr. Christensen and he looked it over.

Q. Did he make any changes in it?

A. He made two changes.

Q. Would you identify the changes?

A. In Question 1-A, he made—the question originally read—

A. (Continuing.) Question 1-A originally read, in the handwritten draft that I had submitted:

“Do you normally use an automobile for your regular grocery shopping?”

Mr. Christensen changed that question to:

“Do you normally use an automobile for your regular food shopping?”

A similar change was made in Question 1-B, from “grocery” to “food.”

I believe I said that there were two changes, but there were actually three changes, but it is actually the same kind of a change and that is in Question 3-B, and that question was changed in the same way.

547 To the best of my knowledge, those were all of the changes.

Q. After Mr. Christensen approved the questionnaire, you then distributed it to the girls for use?

A. No, then we typed it up—printed it and prepared it. It was not in printed form then.

Q. And in the non-printed form, it had been approved by Mr. Christensen, and then you went through the mechanics of printing it up, and then you gave it to the girls, is that correct?

A. Yes.

Q. You had a very short space of time within which to do the study, did you not?

A. Yes, it was very—very short—yes, it was very short.

550 *Redirect Examination by Mr. Christensen.*

Q. Were the procedures that you used in developing and making this survey standard procedures used by your  
551 organization in making surveys of this nature month in and month out?

A. Yes.

The Court: The objection is overruled. It will be received in evidence.

(Thereupon said document, so offered and received in evidence was marked Plaintiff's Exhibit 17.)

*Recross Examination by Mr. Dunau.*

Q. Mr. Churchill, under the column "Probable Minimum and Maximum Propositions in Population," which you previously explained, I did not quite understand your explanation.

552 How did you decide that if you get a 66 per cent sentiment, that that shows that the probable sentiment for the whole universe varies between 60 and 72 per cent?

A. Well, this gets into the basic probability theory. There are formulas for working out these estimates, but I can show you here, in an exhibit that we utilize in our work, which shows the amount of error, the different sample sizes, and the different observed proportions that will exist in data of this nature, which is ninety-five out of a hundred times.

The formula involved, in arriving at these estimates, is  $PQ$  over  $N$ .

The Court: What does that mean?

By the Witness:

A. That means it is the proportion of the likelihood of an event multiplied by the proportion—the probability

of an event multiplied by the probability of an event not happening, divided by 1.

553 By Mr. Dunau:

Q. Mr. Churchill, on the same page, Summary of Key Findings, you have an item described, "Cannot drive or car is not normally available on week days"?

A. Yes.

Q. Why did you put those two items together?

A. This, to me, represents a fair estimate of the women interviewed who don't have a car available during the day, and then—or, if they have a car available, it is meaningless, because they cannot drive.

Q. It makes no difference to you, then, whether the reason they don't use the car is that they don't drive, or they can drive and they don't have it available? Those two things are the same, in your mind, is that right?

A. They are not the same, obviously, but in terms of being able to drive to a store during the day, yes. Then I would say they are essentially the same.

Q. I see.

Now, under the Summary of Key Findings, "Have  
554 had experience where an unsatisfactory substitute had to be served to the family"?

A. Yes.

Q. The answers to the question "Have you had an unsatisfactory experience," for a woman of sixty-five could cover any unsatisfactory experience at any time during the sixty-five years of her life, is that right?

A. Yes.

Q. So that this could cover one unsatisfactory experience during the lifetime of any one of the interviewees, is that correct?

A. Yes.

555 FRANKLIN J. LUNDING, a witness called on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you please state your full name for the record?

A. Franklin J. Lunding.

Q. Where do you live, Mr. Lunding?

A. I live in Winnetka.

Q. How old a man are you?

A. Fifty-six.

Q. What is your job?

A. I am Chairman of the Board and Chief Executive Officer of Jewel Tea Company.

556 Q. How long have you been with Jewel Tea Company?

A. Since June 29, 1931.

Q. Is Jewel your entire—has it been your entire business life, or virtually that?

A. No. I don't know whether it is business life or not, but—

Q. Your principal connection?

A. My principal connection, yes.

Q. Did you have any work experience before your connection with Jewel, Mr. Lunding?

A. Yes. I was an attorney for the Federal Trade Commission, New York.

Q. And since 1931 you have been a merchandiser of Jewel, is that correct?

A. No, not completely.

I joined Jewel as general counsel in 1931, I would say I got into the merchandising side of the business about—well, actively in 1934.

Q. Since that time have you made it your business to be

aware of merchandising trends in the general retail field throughout the United States?

A. Well, I have tried to.

557 Q. I will ask you to be a little immodest.

Have you been recognized as a well-informed merchandiser by any organization that tries to rate or evaluate people?

A. The American Marketing Group here in Chicago made me the Marketing Man-Of-The-Year last week, I believe it was.

Q. Now, will you explain in your own way whether there has been a change, merchandising, of retail items generally, and particularly of foods and meats in the last twenty years in this country and since the days of the gaslight era?

A. Well, of course the great step forward in retailing, from the standpoint of reducing costs, was self-service.

We got into the food store business in March of 1932, through the purchase of seventy-seven Loblaw stores, which were self-service stores, and the self-service system at that time was not common.

When we purchased these stores, they did not have meats, because in those days people shopped in what you  
558 might call specialty stores, the store that handled only special fruits and vegetables, the independent market.

We were largely handlers of groceries and household products on the self-service basis.

Then we did start into the meat business, my recollection would be about 1934. But these were service markets.

As we went on, of course we developed. We added to our markets full lines of fresh fruits and vegetables.

A further extension of perishables in the dairy end, such as cheese, and milk, and the like, and meats such as processed meats, smoked meats, and such things.



But these were all on a service basis.

Also, our locations in those days did not involve parking, because the automobile, which really revolutionized retailing, that is, I should say, the automobile plus the move to the suburbs, revolutionized retailing, so that our 559 early locations were largely at high-traffic intersections, without parking.

Then, as time moved on, particularly in the post-World War II period, you had this great transition towards larger stores, with parking to follow, you might say, the consumer to the suburbs.

The automobile is really the cause, I believe, of the change in retailing, the dramatic change in retailing, particularly the larger store with the broader lines, with the parking available nearby, which also brought what we all know as shopping centers where, with one parking, you may buy many things beyond what we would handle.

560 Q. Mr. Landing, initially, as I understand it, but perhaps not until after World War II, did you operate your stores to any appreciable degree at night? What has been the history, generally, of night merchandising in the last several years for such period as is appropriate?

A. Well, the wheel has sort of moved all the way around.

When we first started in the store business in 1932, our stores were open evenings until eight o'clock.

Then, during the war time period, you had a contraction of hours. Then, post war, with the advent of the large stores, and the self-service method, we have had extension of store hours, partly because of competition, as well as convenience to the public.

Q. Is the night vending of food peculiar to the food business, or do general merchants offer night shopping hours in recent years? Department stores, dry goods stores, and such?

A. Well, the department stores in the central cities 561. normally are not open every evening, but they are open one or two evenings a week.

But when you get into the suburban areas, particularly the large self-service department stores that are commonly known as discount centers, they, generally speaking, unless there are State laws, blue laws, that prevent them from opening, they will be open every evening and also Sundays.

A large part of their business is enjoyed in the evenings and Sundays.

In our foreign operation, we have also found this to be true.

Q. You operate in what foreign countries?

A. We have a joint venture in Belgium.

Q. In Belgium?

A. And our stores there are open until nine in the evening, which is rather unique for that country.

We do 30 per cent of our business in these stores between 5:00 P.M. and 9:00 P.M. in the evening.

562

*Cross-Examination by Mr. Dunau.*

Q. Mr. Lunding, as I understand it, Jewel Tea began to operate meat departments in the Chicago area in 1934, is that correct, sir?

A. 1933 or '34.

Q. Some place in there?

A. Yes, that's right in there.

Q. From 1933 to '34 to the present time, in the Chicago area, covered by Local 320; 571, 547, 638, 546, 262, and Group 1 of 189, there has been no meat department operation after 6:00 P.M., is that correct, in the Jewel stores?

A. You are speaking now of fresh meats?

Q. That's correct, sir?

A. Yes.

Q. It is correct?

A. Well, my impression is that we have not operated in the evening, we have been restricted, of course, by the contract with the Union.

563 Q. Well, for whatever the reason, from the time you began to operate meat departments in 1932, 1933, or 1934, through the present time, the Meat Department has not been operated after 6:00 P. M. within the area defined on Plaintiff's Exhibit 1?

A. Not so long as we have been prevented.

Now, I wouldn't know what that period is. We have not operated after 6:00 since we have been prevented, since we have had no opportunity to operate under our contract with the Unions.

. . . . .

568 Mr. Daugherty: May it please the Court, we have two photostats, Plaintiff's Exhibits 18-A and Plaintiff's Exhibit 18-B for identification. Counsel for the defendants is going to stipulate that these are true and correct and authentic copies of material appearing in the 1960 census for the State of Illinois, prepared by the Census Bureau.

From those we have prepared 18-C and 18-D, and here (indicating) are the blown-up copies which are 18-E and 18-F.

As I understand it, defendants are willing to stipulate that the figures which appear on these exhibits down to this point (indicating) are true and correct copies of the figures which appear on the census report, that the remaining calculations were obtained in the method indicated from those other figures. Is that correct?

Mr. Dunau: That is correct. We will concede the  
569 authenticity. We do not concede the materiality, relevance, or the soundness of the argument with respect to the matter as it deals with the percentage of husbands and wives.

The Court: They are admitted in evidence.

(Said documents, so offered and received in evidence, were marked Plaintiff's Exhibits 18-A, 18-B, 18-C, 18-D, 18-E and 18-F.)

570 HELEN KMIOTEK, a witness called by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you please state your full name?

A. Helen Kmiotek.

Q. Where do you live?

A. 4428 South Center, Lyons, Illinois.

Q. Are you married?

A. Yes, sir.

Q. Are you employed?

A. Yes, I am.

Q. By whom are you employed?

A. Marshall Field & Company.

Q. At what hour in the day is it necessary for you, in the ordinary business days of the week, to leave your home to reach your employment?

571 A. Would you repeat that question, please?

Q. At what hour in the morning do you have to leave home to reach your place of employment at Marshall Field & Company?

A. At 7:15 in the morning.

Q. And on an ordinary day, about what time do you arrive home at night?

A. At 7:00.

Q. Is your husband also employed?

A. Yes, he is.

Q. Working full time?

A. Yes.

Q. Do you have difficulty buying meat?

A. Yes, I certainly do.

Q. With both of you working?

A. Yes.

Q. How do you usually arrange to do it?

A. Well, I usually send my husband out shopping, which is not too good, because he does not know anything about selecting meats, and then on my day off, like today, I can manage to shop a little, but I will be working six days a week soon, so I will not be able to shop at all then.

Q. Do you always shop at night for groceries?

A. Yes, sometimes.

Q. Do you find that convenient?

A. Yes.

Q. Have you ever sought to buy meat at night and been unable to?

A. I would like to have bought meat at night. It is very irritating to see all that meat and not be able to buy it.

573 Q. When you shop at night, do you go into a self-service store and see this meat displayed?

A. Yes.

Q. And you cannot buy it?

A. No.

Q. What effect does that have upon your emotions?

A. It is very frustrating.

*Cross-Examination by Mr. Dunau.*

Q. Did you say that your husband works full time?

A. Yes.

Q. What are the hours of his work?

A. Well, he leaves the house at six, and he is home at four.

574 Q. He leaves home at six in the morning, and he arrives home at 4:00 P.M.?

A. Yes.

Q. How many days a week does he work?

A. He works five days a week.

Q. Monday through Friday?

A. Yes.

Q. What are your days of work usually?

A. Well, today is my day off; it would be from Monday on, except for Friday.

That is my day off.

Q. Friday is your day off, is that right?

A. Yes.

575 ROSEMARY GIOIA, called as a witness on behalf of the plaintiff herein, being first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you state your full name for the record, please?

A. Rosemary Gioia.

Q. Where do you live, Mrs. Gioia?

A. 919 South Harvard in Villa Park, Illinois.

Q. You are living with your husband?

A. Yes, sir.

Q. Do you have some children?

A. I have two young children.

Q. What are their ages?

A. Two and one.

Q. I take it that with those small children you have your hands full and you are not employed in any way?

A. That's correct.

Q. Is your husband employed?

A. Yes, he is.

576 Q. Does he use his car in getting to work?

A. Twice a week, yes.



Q. Are you sometimes a customer of the Jewel Food stores?

A. Yes, I am.

Q. How far are you located, approximately, from a Jewel Store?

A. Approximately two miles.

Q. Do you regard it as necessary to use the automobile to go to Jewel to shop?

A. Yes, I do.

Q. Customarily in your family when do you do your principal buying of groceries?

A. In an evening.

Q. When you are in the store do you go to the Jewel Store to buy the groceries?

A. Yes, I do.

Q. Do you drive over, or does your husband go with you, or how do you do that?

A. I will go in an evening and, if it is possible for me to get out without the children, but if I have to take the children I manage to go in the afternoon.

Having two children and the shopping cart I cannot do much shopping.

Q. When you are there in the evening buying groceries is there meat in the meat counters at the store you shop at?

A. Yes.

Q. Have you ever tried to buy any?

A. Yes.

Q. Were you able to?

A. No, I wasn't.

Q. What do you do about getting your meat then?

A. I will have to make an extra trip on Saturday.

Q. And either your husband sits in the car and takes care of the children or you go alone and he stays home and takes care of the children?

A. Right.

Q. Do you find that quite an inconvenient way of getting the necessities of life?

A. Yes, I do.

My husband attends night school twice a week, so the remainder of the night I have to quickly go to the store and leave the children in his care.

578

*Cross-Examination by Mr. Dunau.*

Q. Ma'am, what are the working hours of your husband?

A. 7:15 to 5:30.

Q. What days of the week does he work?

A. Monday through Friday.

Q. Do you drive a car?

A. Yes, I do.

Q. And how many—Monday through Friday, how many of those days is the car available to you?

A. Three days a week.

Q. What days are they?

Do they vary, or are they the same days?

A. They are the same days.

Q. What are they?

A. Tuesday, Wednesday, and Friday.

Q. You have a car available to you on those days, is that it?

A. Yes, I do.

579 HELEN MUELLER, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Would you please state your full name?

A. Helen Mueller.

Q. Where do you live, Mrs. Mueller?

A. 3938 North Bell, Chicago.

Q. You are living with your husband?

A. That's correct.

Q. Do you have any children?

A. Three.

Q. How old are they, please?

A. Eleven, seven and five.

Q. Are you employed?

A. I am.

Q. What are your regular hours of work, Mrs. Mueller?

A. 8:30 to 3:00.

Q. Is your husband employed?

A. Yes, he is.

Q. I understand he is a policeman; is that correct?

580 A. That's correct.

Q. What are his hours, his usual hours?

A. 5:00 at night to 2:00 in the morning.

Q. How do you do your shopping for groceries and meats in your family?

A. I usually try to go in the evening for my groceries, and meat I usually have to go on Saturday. I have to make two trips.

Q. And do you patronize a grocery that has a pre-packaged meat counter in it?

A. Yes, I do.

Q. You see the meat there and you are unable to buy?

A. That is correct.

Q. Would it be a convenience to you to be able to do it all in one trip?

A. Yes, it would.

Q. Buy the meat when you buy the groceries?

A. Yes, it would.

581

*Cross-Examination by Mr. Dunau.*

Q. Mrs. Mueller, how many days a week do you work?

A. Five.

Q. Which days?

A. Mondays through Friday.

Q. You say your husband works 5 p.m. to 2 a.m.?

A. Correct.

Q. That is this month?

A. Every month.

Q. The same shift every month?

A. Correct.

. . . . .

MARY ANN BEARLEY, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you state your full name, please?

582 A. Mary Ann Bearley, B-e-a-r-l-e-y.

Q. Where do you live, Mrs. Bearley?

A. 5417 North Kenmore.

Q. Chicago?

A. Chicago.

Q. Are you employed?

A. Yes, I am.

Q. And what are your hours of employment?

A. Five in the morning to 1:00 in the afternoon.

Q. Is your husband employed, also?

A. Yes, he is.

Q. What are his hours?

A. Midnight to 8:00 in the morning.

Q. When is your husband's payday?

A. Friday.

Well, as a matter of fact, he cannot pick up his pay until Friday evening around 6 o'clock.

Q. Friday evening around 6 o'clock?

A. That's right.

Q. When do you normally do your heavy grocery shopping in your family?

A. Well, usually I try to do it on Friday night, so I will have one day to myself, which would be Saturday.  
583 I do part of it Friday night, and then I have to go back on Saturday morning.

Q. And I assume, like most families, that Saturday night paycheck is a help in paying the grocery bills; is that correct?

A. That is correct.

Q. In the store that you patronize is there a pre-packaged prepared meat counter?

A. Yes, there is.

Q. And when you go in there Friday night you are unable to purchase the meat?

A. That is correct.

Q. You have the money and paycheck there and you would like to spend it for meat and can't; is that correct?

A. That is correct.

Q. So you have to make a special trip back Saturday for meat?

A. Yes, I do.

Q. Does that irritate you?

A. Yes, it does, because I do try to sleep on Saturday mornings, being that I get up at 4:00 every morning 584 during the week.

ROBERTA APPLEBAUM, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Would you state your full name for the record, please?

A. Roberta Applebaum.

Q. And where do you live, Mrs. Applebaum?

A. 2724 West Granville.

Q. You are living with your husband?

A. Yes.

Q. Do you have any children?

A. A baby.

505 Q. Approximately how old?

A. One month old.

Q. A month old? During what hours is your husband normally away at his occupation, whatever it may be?

A. He leaves the house about 8:30 in the morning and comes home anywhere between 5:30 and 7:00 o'clock.

Q. Does he use the automobile in his work?

A. Yes, he is a salesman.

586 Q. I don't hear you.

A. Yes, he is a salesman.

Q. How do you and your family buy your groceries and your meat?

A. I have to buy my meat by phone.

Q. How do you buy your groceries?

A. I have to visit till Saturday morning when he is working in the house and then I go.



Q. Do you ever buy groceries at night?

A. Often.

Q. When he is home with the car?

A. Yes.

Q. And in the store you go to is meat available, but you are unable to buy it because it is covered up?

A. It is impossible to buy it. It is impossible to buy it at night.

Q. Does that irritate you?

A. It is very frustrating.

Q. Mrs. Applebaum, did I understand correctly that customarily you buy your groceries on Saturday?

A. That's right.

Q. That is your normal shopping day?

A. No, it is not. I have to go shopping every other day.

Q. But you make your grocery purchases on Saturday, is that it?

A. Yes, sir.

Q. And you go to get your meat purchases on Saturday?

A. I can't. I have no freezer and I can't keep meat for more than two days.

588 JANE GLICK, a witness called by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Would you state your full name and address, please, Mrs. Glick?

A. Jane Glick, 743 Junior Terrace, Chicago.

Q. You are married?

A. Yes.

Q. As I understand it, you Mrs. Glick, not only live with your husband, but you work with your husband, who is an insurance broker, is that right?

A. That is right.

Q. Do you have regular hours of employment which you are in the office, or do they vary, Mrs. Glick?

A. Well, I am always there from 8:30 to 5:00, and very often later.

589 Q. That is five days a week?

A. I am always there five days a week; very often I am down on Saturday, also.

Q. In the normal course of events, what time do you usually buy your groceries?

A. Well, generally I try to buy them on the way home, and I very often don't make it.

Q. And are you able to buy meat on the way home?

A. Well, providing I can get there by five minutes to six.

Q. And are you always able to do that?

A. No, very often I am not.

Q. Would it be a convenience to you to be able to buy meat during the very early evening hours?

A. Yes, it would.

591 Mr. Christensen: May 13-B to O, inclusive, be shown as received in evidence?

The Court: All right, they are received.

647 [Session of Friday, November 2, 1962.]

JAMES VICTOR BRODNICKI, having been previously duly sworn, deposeth and saith further as follows:

*Direct Examination by Mr. Christensen (Continued.)*

648 By Mr. Christensen:

Q. Mr. Brodnicki, referring to Plaintiff's Exhibit 19 for identification, a document headed, "Jewel Food Stores, 1957 estimated costs that would be incurred if all Jewel Stores were closed in late 1957," you testified last week to the method by which you had prepared an earlier exhibit as to strike costs. What differences are there in this exhibit from the one you earlier testified to?

A. These figures are based on the company performance in the last eight weeks of 1957 and the previous ones had been based on the current years' performance.

649 Q. In 1957, did the company engage in any Sunday operations?

A. No, sir.

Q. Therefore, in figuring the daily cost of a strike, you have figured it on a 6-day week rather than on a 7-day week, is that not correct?

A. That is correct.

Q. From what source did you derive the figures "Loss of Sales"?

A. From our company records I determined what all stores were doing during this time.

Q. And do you have those work sheets available to display to counsel, sir, if he wishes to see them?

I am referring to your work sheets from which you have derived those figures.

A. Yes, sir.

Q. Now, how did you determine the figure that appears under the heading "Continuous Expenses"?

A. I analyzed each of the store expenses which were charged to the operation of each of our stores, and I analyzed each of them, whether they be salaries, supplies, 650 rent, warehousing, or administrative, to determine which of these costs would continue on in the event of a strike.

From this I was able to determine the percentage of sales as to which of these expenses would continue.

You might label these "Custodial" type of expenses.

Q. Did you use the same general formula that you used in preparing the prior exhibits?

A. Yes, I did.

Q. As reducing everything down to the irreducible expenses, and that you applied in order to determine the cost level in that period?

A. That is correct.

Q. The column headed "Loss of Earnings" bears a double asterisk. Now, why the double asterisk?

A. The footnote explains the time period in which those earnings were occurred, and it also explains, I believe, the income tax.

Q. But the footnote does not show that.

A. I believe a sentence was left out in the typing 651 of that, which should explain it.

Q. Apparently a sentence was left out.

And what is that figure? Is that as to all earnings before or after taxes, based on the 1957 experience?

A. This is earnings after Federal income tax.

The Court: What basis did you figure this on?

The Witness: The 52 per cent return.

By Mr. Christensen:

Q. That was the actual return the company paid in that year on the return?

A. Within one-tenth or so, I believe.

Q. Then the last three columns, "Continuing Expenses" and "Loss of Earnings" and the "Totals" are merely repetitions of those figures and accumulated as you go down?

A. That is correct.

Q. You show a break in the middle of the exhibit, and that means that you there convert, daily assessment 652 of exact loss, to a weekly assessment?

A. That is correct.

653 Q. How did you ascertain the amount of perishables that would be in inventory in the several Jewel Stores in the closing weeks of 1957?

A. I was able to determine this figure more accurately in 1962, finding out what perishables there were in dairy products, meats, produce and delicatessen items, and from this information I was able to reduce what is in inventory right now to the approximate value which would be in inventory in the year of 1957, based on the lower sales volume.

I was not able to do it item by item as well as I was able to do it at the current figures, so that is a reduced figure based on the sales inventory at that time.

Q. And you used the same proportions?

A. Yes, sir.

Q. Is that what you are saying?

A. Yes, sir.

Q. The figure of \$1,006,000, is an estimate arrived at by applying to the 1957 sales level, by applying it to the 1957 sales level?

A. Yes.

654 Q. The ratio of perishable products that you were able to ascertain the stores have on hand in 1962, sir, in relation to their—

A. (Interposing.) That is correct.

Q. (Continuing.) —average volume of business, I should say?

A. That is correct.

Q. And would your testimony of the other day as to what might happen with respect to perishables, sir, apply equally well to the situation as to perishables in 1957?

A. Yes, sir.

655 *Recross Examination by Mr. Dunau.*

Q. Mr. Brodnicki, on your estimated \$1,006,000 of perishable products, what value or what cost did you use in arriving at the \$1,006,000 figure?

A. Well, yes, I think I can give that to you, and may I refer to an additional worksheet?

Q. Yes, please do.

A. I was able to, based on inventory figures of our stores for the dates in September, 1962—I was able to determine the average level of inventory and the cost for

the four various commodity groups, and that is dairy  
656 products, delicatessen item, meats and produce, and

I was able to find out what the cost value of those commodities were in what might be considered an average store or an average for the chain.

I was able to do this for the time period in September, 1962, and I reduced these figures by the lower sales level were were in existence back in 1957.

I was unable to find inventory records to substantiate these figures, but I did feel that they were rather reliable.

Q. You have no information, then, as to what the actual inventory was on those products in 1957?



A. I believe that is correct.

Q. And your estimated loss is also based, is it not, sir, on an assumption that you did not have sufficient notice in advance of a strike in order to eliminate any loss of perishables?

A. No, sir.

Q. The figures at the top portion of the chart, they are not on your footnote No. 1?

A. This footnote is conjecture, and the loss would be some portion of all of that figure, and would be based 657 on the type of notice which would be granted in probably other circumstances.

Q. You say it is conjecture?

A. It is conjecture as to what the percentage of the \$1,006,000 figure would be—it is conjecture as to what percentage of the \$1,006,000 figure would be considered a loss based on other circumstances, which I was unable to predict.

Q. Going to your footnote, which has the two asterisks?

A. Yes, sir.

658 Q. And "Continuing Expenses are irreducible custodial expenses, lease charges, and are predicted upon an assumption the company could immediately get on such a basis," and what would prevent the company from immediately getting on the custodial basis?

A. I would assume that a clerical accounting staff would not be needed as of this time.

There are certain things like filing sales tax reports, that even though a store may be shut down, that it might have one more report that would have to be prepared.

I would assume the warehouse would quit functioning, and you could send home its assemblers and receivers, and it is conceivable that there could be some merchandise, which is in transit, which would have to be accepted and/or received at the warehouse, and possibly also these boxcars would have to be unloaded.

Also, in our bakery—we have a bakery which produces goods, and I assume it would be possible to send those 659 people home immediately to avoid further losses.

It is conceivable there might be some cleaning-up process which I would have to further study to anticipate these losses of costs.

661 The Court: (Interposing.) Exhibits 16 and 19 are admitted, and counsel will correct or add the missing line.

675 Mr. Dunau: I should like to offer into evidence at this point, your Honor, the exhibits which I have just 676 spoken of as exhibits for identification. Defendant Union Exhibits 3 through 3-F, constitute the papers received from the plaintiff itself and giving us a history of year by year of 1954 through 1961, of individual store earnings.

Mr. Christensen: No objection, your Honor.

The Court: They are all admitted without objection.

(Whereupon the documents which were marked DEFENDANT UNION EXHIBITS 3 to 3-F were admitted into evidence.)

Mr. Dunau: Defendant Union Exhibit 4 is a compilation made by me on the basis of the information contained in Defendant Union Exhibits 3 and 3-F, which are in evidence. May I offer that?

Mr. Christensen: Mr. Dunau, I understand that you have simply copied selected stores from the year 1961 under your Exhibit 4. This is simply—this is simply a copy job?

Mr. Dunau: Yes. When you say “selected stores” 677 I should say the stores selected were all stores in which stores were open for meat selection after 6 p.m.

Mr. Christensen: From what stores do you derive that information?

Mr. Dunau: Plaintiff's Exhibit 16, which has just been admitted into evidence, shows all stores in which meat was sold in 1961, after 6 p.m. These are 32 stores. The one store which we have excluded, and that is the 33rd store, is Hillcrest, because in Hillcrest, based on your Exhibit 13-N, Hillcrest does not operate a meat department after 6 p.m., so that store has been excluded.

678 Mr. Christensen: I have no objection to this, subject to checking the accuracy.

The Court: Subject to verification, very well. It may be received in evidence.

(Said document, so offered and received in evidence was marked DEFENDANTS' EXHIBIT 4.)

Mr. Dunau: I offer Defendants' Exhibit 5, which is a comparison of the thirty-two stores in which the sales of fresh meat are permitted after 6:00 P. M., as compared with the divisions in which no stores have permit sales—have sales of fresh meat after 6:00 P. M.

This, again, was information obtained entirely from the plaintiff's own—

Mr. Christensen: Now, if it please the Court, I get to the embarrassing position of having this objection, and we have serious objection, as to the statistical probative value of the pleaders' argument here.

679 Counsel says he prepared it himself. I don't want to cross-examine Mr. Dunau, but he has picked out part of the chain without rhyme or reason as against thirty-two stores and is statistically invalid.

He has made his own segregation, without the faintest accounting authority for it.

While I have the utmost respect for Mr. Dunau, I will not concede he is a qualified statistician or accountant. If he wishes to become such, he has got to don the robes of one and get up on that witness chair and let me have a go at him.

Mr. Dunau: If your Honor please, the objection which has just been stated as with the same objection I have made with respect to plaintiff, go to weight and not admissibility.

I could just as easily, at the conclusion of this, file 680 a brief, include this as part of the argument. It would be a valid argument. It would be based on the information taken from the plaintiff's own exhibits, and whatever objection there could be to it would be simply on the basis of whether the arguments are valid or invalid.

By putting them in this way we serve the convenience of the Court. We have a ready place for him to look for these comparisons.

Mr. Christensen: Well, if it is going in as an argument and not as evidence, upon that condition I won't object to it.

The Court: The Court will receive it. Of course, you can have your accountant analyze it and we will hear you in final argument on it, and go to the weight, rather than to its admissibility.

Mr. Dunau: Entirely agreeable with us.  
681 (Said document, so offered and received in evidence, was marked DEFENDANT'S EXHIBIT NO. 5.)

Mr. Dunau: Defendant Union 6 takes the four stores for the calendar years of 1957 and '58, in which there was a change of market-operating hours, and compares those four stores with four other stores in the same two years in which meat was sold after 6:00 P.M., but in which there was no change in marketing hours.

It compares them with four other stores in which there was no market-operating hours after 6:00 P.M. in either year, and then it compares those four stores with the over-all Jewel average.

All of this information is subject to check the accuracy of my arithmetic and was obtained from the plaintiff's own figures.

Mr. Christensen: Counsel, this, again, is an argument, is it not?

Mr. Dunau: It is on the same basis as Defendant Union's Exhibit 5.

Mr. Christensen: Well, upon that—I have no objection to it on that basis.

The Court: It is received.

(Said document, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT 6.)

Mr. Dunau: Defendants' Exhibit 7 takes each of the—takes eight of the nine stores which Plaintiff has used as the basis for its study.

It excludes from the nine stores the 2601-Michigan City, because that store does not have a sufficiently long history to tell us anything.

It takes each of these stores, and goes from the first full year of operation through 1961, to show the percent increase or decrease in sales of each of these stores, and the purpose is to show that the variation in increase and decrease is so great that nothing can be drawn from a single year's experience in any individual store.

Mr. Christensen: Counsel, when did 2601-Michigan City open?

Mr. Dunau: It was opened on May 6, 1959. We do not have a full year for 1959; therefore, we cannot use that year. We have a full year for 1960, and a full year for 1961 in Michigan City.

Mr. Christensen: Oh, well, I object to this bobtailed exhibit, whether it be an argument or anything else.

Mr. Dunau: If you would like the comparison year to year—

Mr. Christensen: I am objecting to your presenting a bobtailed thing like this.

684 Mr. Dunau: On Michigan City, your Honor, in the exhibit presently in evidence as Defendant Union Ex-



Exhibit 3-F, for the two years 1960 and 1961, in which that store was in operation, the comparison appears on Page 7 of Defendant Union Exhibit 3-F.

Mr. Christensen: That won't help you.

Mr. Dunau: But it hardly makes any difference if I add it to this exhibit or if I keep it on Defendant Union 3-F.

Mr. Christensen: It hardly makes any difference. They are all in. You either copy them all in or none of them.

Mr. Dunau: I have no objection to withdrawing this exhibit for the present, your Honor, to copy in the 1960 and 1961 figures for Michigan City.

The Court: You may have permission so to do.

Mr. Dunau: May I understand, then, that all these are in subject to my addition on Defendant Union Exhibit 685 7 of the Michigan City Store?

The Court: That is correct.

Mr. Dunau: Thank you, your Honor. I will correct this for your Honor. This is a set of exhibits. If your Honor please, Defendants' Exhibit 2 for identification was previously identified and contains a store by store breakdown of the questionnaires, which the Plaintiff distributed amongst its stores to determine allegedly the consumer response to night operation.

I offer in evidence Defendants' Exhibit 2 for identification.

The Court: Any objection?

Mr. Christensen: No objection.

The Court: Proceed.

Mr. Dunau: Would you mark this Defendant Union Exhibit 8 for identification?

(Said document was marked Defendant Union Exhibit 8 for identification.)

Mr. Dunau: Your Honor, this is a stipulation, Defendant Union Exhibit 8 for identification, which has been entered into between the Defendants and Plaintiff subject to Plaintiff's objection to relevancy and ma-



teriality. It lists the major operators insofar as we have been able to obtain information from them, for the years 1957 and 1962, the number of self-service markets and the number of service markets they operate within this area here, the area within which the marketing hours, provision exists, and the number of employees in the self-service and service markets for each of the relevant years.

The Court: Are you through with the witness on the stand?

Mr. Dunau: Yes, I am sorry. I am through with him.

The Court: You may be excused.

(Witness excused.)

Mr. Christensen: If it please the Court, we do not know what position to take as to this exhibit without some showing by counsel as to its materiality or what it tends to prove.

The Court: You mean Exhibit 8?

Mr. Christensen: Exhibit 8. Now the fact is that counsel asked several of the major operators here to give him a census report as of 1957 and 1962. Some of the larger operators complied with his request and some did not. Very few of the independents did. I don't know what this is a sampling of or what it is contended as the materiality of it can be.

As to our own company, the Jewel Tea Company, we have no objection to the information or to stipulating what the information is. But this doesn't show either employers in the area nor employees in the area. It only shows a few who would give you some figures.

Mr. Dunau: It shows all the major employers. There is not a single major employer which does not appear on this exhibit.

Mr. Christensen: Oh, oh, oh.

Mr. Dunau: Ask Mr. Vorbeck.

Mr. Christensen: You bet I will ask him.

Hillman's isn't on there. Stop & Shop. And there are a number of the smaller chains that aren't on there.  
688 There are a lot of IGA markets.

Mr. Dunau: IGA doesn't—

We will have information, your Honor, to fill out as to any other employers by way of testimony. We will have testimony with respect to Del Farm. We will have testimony with respect to IGA. Certainly there is—

Mr. Christensen: I suggest this be withheld until we know where we are going.

The Court: Well, the Court will reserve its ruling for the present.

Mr. Dunau: Very well, your Honor.

689 EDWARD VORBECK, called as an adverse witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Dunau.*

Q. Would you state your full name, sir?

A. Edward Vorbeck.

Q. Where do you live?

A. 512 Dundee Avenue, Barrington, Illinois.

Q. You are employed by the Jewel Tea Company?

A. I am.

Q. What is your present position with them, sir?

A. General attorney and assistant secretary of the company.

Q. When did you first begin to work for Jewel Tea?

A. In 1935, in September.

Q. In what capacity?

690 A. As an accounting clerk.

Q. What did you do as an accounting clerk?

A. Well, mostly posting expense accounting records, analyzing expense accounts of the company, and the route division.

Q. How long did you continue in that position?

A. I continued as an accounting clerk roughly for two years, moving around within the expense accounting section at various jobs.

Q. And at the end of that 2-year period, what position did you have?

A. I was transferred into what was known as the payroll bonus division of the company, handling unemployment compensation claims.

Q. How long did you occupy that position?

A. I would say six to seven months.

Q. Then what happened?

A. At that point the general counsel of the company, Robert Muir, died and all the members of the law department were moved up, and they made space for me as a law clerk in the Law Division.

691 Q. When did you begin working as a law clerk in the Law Division, sir?

A. My recollection would just have to be an estimate, and it would be about '38—1938.

Q. Was it during this period of time you were studying law at night?

A. Yes, sir.

Q. How long did you remain as a law clerk?

A. Until I passed the bar in October of 1940, or until I was admitted in October of 1940, rather.

Q. Then what happened?

A. I became assistant counsel of the company.

Q. How long did you occupy the position of assistant counsel?

A. I would say approximately eight years.

Q. To the date up to 1948?

A. Right.

Q. What position did you have in 1948?

A. Well, if my memory or my recollection is correct, I became in charge of the Legal Division of the Jewel Food Stores, a division of the company.

Q. How long did you hold that position?

692 A. Just for a couple of years, and then they changed the title.

Q. In June of 1950, were you appointed general attorney and assistant secretary?

A. I think I was elected assistant secretary in June of 1950. I believe I was still head of the Legal Division of Jewel Food Stores at that time. I do not believe I became general attorney for the company until about 1954.

Q. And from 1954, you were general attorney and assistant secretary to the company?

A. Yes, sir.

Q. And that is your present position?

A. That is correct.

693 Q. Does your present position entail negotiations and administration of collective bargaining agreements with Defendant Unions?

A. Yes, it does.

Q. When did you first begin working at the job of negotiating and the administration of collective bargaining agreements with the Meat Cutters Local Unions?

A. My recollection is a little indefinite, but around 1946 I commenced to attend the negotiating sessions with Mr. Hargrave of our company.

Q. Who is Mr. Hargrave?

A. He is vice-president of—I believe his title now is Public Relations. At the time, though, I worked under him it was just secretary of the company and later as vice president in administration.

Q. When you became the assistant to Mr. Hargrave,

did his job include negotiations and administration of agreements with the Meat Cutters Local Unions?

A. Yes, sir.

Q. You assisted him in that job?

A. Yes, sir.

694 Q. Did there come a time when you became the principal negotiator on behalf of Jewel Tea?

A. There did.

Q. When was that?

A. I think the last negotiations with Mr. Hargrave, as the primary negotiator, was the one where we negotiated the self-service contract, and I believe that was in the latter part of 1952.

I think I took over the next negotiations, and as to the exact date, I am not exactly sure.

Q. Well, then, until 1952, is it approximately correct to say that you were assisting Mr. Hargrave?

A. That is correct.

Q. Then after 1952, you undertook the job of being the principal representative of Jewel Tea Company, in dealing with the Meat Cutters Local Unions?

A. With respect to the Meat Cutters Locals, that is correct.

Q. Would you explain in what division of the company the operations of the food stores in and around the Chicago area is?

A. The Jewel Food Store Division.

695 Q. What comprises the Jewel Food Store Division?

A. It has the responsibility for operating all of the Jewel Stores supervised out of our south Ashland Avenue and Melrose Park offices.

The Eisner Food Store Division is serviced out of Champaign, and is not a part, as I understand it, of the Jewel Food Store Division, although they are receiving more and more supervision today.



The third major division in this area is the Routes Division.

Q. Would you explain the Routes Division?

A. That is the parent operation of the company and was founded in 1889, incorporated in 1916, and the present corporation was a New York corporation.

We operate Routes throughout most of the states in the United States, in which we sell merchandise directly to the housewife at her home through Route salesmen who call on the customer once every two weeks, approximately the same day of the week and as close to the same hour of the day as they could get there each time.

Q. Does the company have other divisions?

696 A. Yes, sir, we do.

Q. Would you state what those other divisions are?

A. We have a division that I cannot state accurately, but it is a foreign operation, in which we are a part-owner along with some Belgian investors, in operators in Belgium.

We also have a division known as the Turnstile Division, which operates in the East. We have separated them into two parts, known as the Turnstile East and the Turnstile West. I think there are four or possibly five large discount-type operations in the east.

In the west, at the present time, or in the mid-west, I should say, we have one presently in operation in Racine, Wisconsin.

697 Q. What other division do you have, sir?

A. In addition to that, we recently acquired the Osco Drug Company. I believe it is a subsidiary operation at the present time.

Q. What does the Osco Drug Company do?

A. Well, they operate drug stores in quite a number of Midwest States. I think there are approximately forty-odd stores in operation.



I'm not as familiar with that operation as I should be, I suppose.

Q. All right; let's go back to the Jewel Food Stores Division:

Is that also sometimes known as The Chicago Division?

A. Yes.

Q. Does the Jewel Food Stores Division include stores in addition to those represented by the defendant local unions?

A. Yes.

Q. Looking at Plaintiff's Exhibit 1, if I understand 698 you correctly, then you have stores in which meat cutters are represented by Locals 262, 189, Group 1, and other groups, 546, 638, 547, 571, 320, and in addition to that, you have stores operating in territories outside the territorial jurisdiction of the defendant Unions, is that correct?

A. That is correct.

Q. The Jewel Food Stores Division, does that operate in stores under a trade name other than Jewel?

A. I think the Food City store might be one that is.

Q. Are there any other such stores?

A. None that I can recall. I don't believe there are.

Oh, I would have to qualify that. There are approximately five stores that are operated by the division called the Jewel-Osco Division, in which the food stores and drug stores are operated jointly. The store in Barrington, where I live, is a store that is operated in this division.

Q. Do these stores have meat departments?

A. Yes, the food store part of the store is called Jewel. The drug department is called Osco.

699 Q. I show you what has been marked as Defendants' Exhibit 9, which is entitled, "Store Hours, December 28, 1957."

Does that constitute the list of stores within the Jewel Food Division, as of December 28, 1957?

A. I believe it does. It is a list that was originally published in January, 1958, and changed for stores after December 28, 1957.

Q. Now, there are some stores which have a line marked through them. Will you state what the reason for that is?

A. Well, referring first to 24 Dryden, Arlington Heights, that store is lined because it was opened after December 28, 1957.

700 Q. The next one is 341 Collins Street, Joliet, and that is ruled because it is outside of this area, as described in this complaint.

Q. Now, without going through all of the rest of them—

A. I can make, I think, all of them ruled out on one or the other grounds.

Q. Either the store was opened after December 28, 1957, or it is a store which is operated outside of the territory represented by the defendant Unions, is that it, sir?

A. Yes, sir.

Q. And is it accurate to say that we could find no stores which were opened after December 28, 1957, by looking at the notation of the date opposite that store?

A. Up to the date of this publication of January 23. Actually, there were put on there some stores opened later than January 23rd, in the expectation that it would open, such as Arlington Heights, 24 Dryden, was opened on December 28th.

701 Q. If the store was opened subsequent to December 28, 1957, we would have opposite that store if it is lined through, the date on which the store was opened, is that correct?

A. Well, that would not bring you down through all of 1958.

702 By Mr. Dunau:

Q. No, but it will eliminate those stores which were opened after December 28, 1957, which appear on this list.

A. Yes, sir, that is correct.

Q. And the other stores which are crossed out, but upon which no date appears opposite them, are those stores which are operated outside the territorial jurisdiction of the defendant unions; and talking only, when we talk about the defendant unions, of Group 1 of Local 189?

A. That is correct.

Q. Now, where there appears an "S" opposite a store, does that indicate that that store is operated as a service market?

A. That is correct.

Q. Now, on the second page of the exhibit—

A. May I qualify that? That means that the meat department of that store is operated as a service market. The food-store department operated throughout the chain as a self-service operation.

Q. Now, on the second page of that exhibit there appears an explanation of hour code, and then at the bottom we have "M," as one of the hour codes, and then some-  
703 thing seems to be cut away. Can you fill that out for us?

A. M applied, and that notation is in my handwriting, to 30-Williams Street, Crystal Lake, where the coding was in—I should have put in editing this that the coding was incorrect. I recoded it to indicate that the store was open on Friday nights, open all day on Mondays, I am sorry—open all day on Friday, from 9:00 a.m. to 9:00 p.m. On the remaining days of the week it was only open to 6:00 p.m.

Q. Now, then, by applying the code which appears on Page 2 to each store where the code is designated, we can

find the hours of operation of the grocery department and the meat department in those stores, is that correct?

A. Yes, sir.

Mr. Dunau: I offer in evidence Defendants' Exhibit 9.

The Court: Any objection?

Mr. Christensen: No objection.

The Court: It is received.

(Said document, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT 9.)

704 Q. Mr. Vorbeck, I show you what has been marked Defendants' Union Exhibit 10, which is a list of Jewel Food Stores as of December 30, 1961. Is that the same sort of list as Defendants' Union Exhibit 9, except that the date is as of December 30, 1961?

A. Yes, that is.

Q. Would you explain the cross-outs of stores on that list and tell me what they signify?

A. I will have to do this the same way I did before.

Q. All right.

705 A. The first cross-out I see is 15 South Lake, Aurora, and I don't quite understand it.

Q. Well, isn't that, Mr. Vorbeck, because 15-Aurora operates a meat department after 6:00 p.m.?

A. Yes, yes.

Q. And the cross-outs are cross-outs of those stores which operate meat departments of stores after 6:00 p.m.?

A. May I just go through them?

Q. Yes, please.

A. That is true of the next one.

I think that observation applies to every store stricken out with the exception of one or two, which I don't believe were opened as of December 30, 1961. I certainly don't

observe any other notations to be made with respect to those stores.

Mr. Dunau: I offer Defendant Unions' Exhibit 10.

Mr. Christensen: No objection.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT 10.)

706 By Mr. Dunau:

Q. Now, in general, Mr. Vorbeck, in those stores in which the meat department does not operate after 6:00 p.m., does the grocery department in some of those stores operate after 6:00 p.m. to 9:00 p.m., on Friday night?

A. Yes, in general they do.

Q. In other stores does the grocery department operate from 6:00 p.m. to 9:00 p.m., Thursday and Friday?

A. In other, but not all stores.

Q. All right. And in still other, but not all stores, does the grocery department operate Monday through Friday, 6:00 to 9:00?

A. Yes.

Q. Now, in proposing, or in seeking to operate the meat department after 6:00 p.m., was it Jewel's purpose to operate the meat department during the same hours as the grocery department was operated in the store?

A. Yes, sir.

Q. Would it be approximately accurate, Mr. Vorbeck, to describe the area in which the Defendant Local Unions operate, including only Group 1 of 189, as Chicago and the suburban perimeter?

A. That's substantially correct.

708 Q. Disregarding the Defendant Unions, does Jewel Tea have collective bargaining agreements with other meat cutter locals of the same International, which contain provisions regulating market-operating hours?



A. I would have to examine the contracts to give you an all-inclusive answer on that. Generally speaking, they do not prohibit or spell out the hours in which we may market our meat products, or limit it in any way.

There may be exceptions to that in particular contracts, but we have been able to live with them. I believe that they permit—let me go to the records, if I may.

398, down in Eisnerland, operates out of East Central Indiana; it permits unlimited hours of operation.

534 out of Taylor—out of East St. Louis, covering our Payne and Taylorville stores, permits unlimited hours of operation.

543 out of Peoria, covering our Peoria and Springfield field stores, permits unlimited hours of operation. 189 itself permits unlimited hours of operation in all areas except Group 1.

To the north, Local 283 in Kenosha, permits as of the last negotiation, unlimited hours of operation.

To the east, Local 350 in Lake County, Indiana, permits unlimited hours of operation.

Farther east is Local 119 in Michigan City, Indiana. They permit unlimited hours of operation.

And I believe that Local No. 539 in Benton Harbor, permits unlimited hours of operation.

And currently negotiations on two other locals. One other meat cutter local.

Q. What is the situation as to that one other meat cutter local?

A. That permits unlimited hours of operation, except on holidays. Practically all of them restrict operation on holidays.

Q. All of them, then, restrict operation on holidays, is that it?

710 A. Yes.

Q. How about Sundays?



A. I don't believe any of them presently do.

711 Q. Now, let's go to Local 283 in Kenosha:

You say the present collective bargaining agreement does not offer marketing hours in Kenosha. Do you have stores there?

A. Yes.

Q. What hours do they operate after six?

A. I believe it was limited to one night a week.

Q. And was this Friday night?

A. Yes, sir.

Q. Now, on Friday night, did the agreement provide that market-operating hours shall be from 9:00 A.M. to 9:00 P.M.?

A. The exact wording of the agreement I don't recall. That contract has a rather peculiar wording. Neither I nor counsel have contributed to the wording of that contract. I cannot tell you how it is worded.

Q. I don't want to know the exact wording, but its effect was that for Friday night the market operation was from 9:00 A.M. to 9:00 P.M.?

A. We didn't think that was the effect.

Q. Did an arbitrator decide definitely?

A. Yes.

712 Q. And did he decide that your agreement in the Kenosha market operating hours from 9:00 A.M. to 9:00 P.M. on Friday, and only 9:00 A.M. to 6:00 P.M. on Monday, Tuesday, Wednesday and Thursday?

A. That's a pretty broad conclusion. In general, I would have to say yes. I cannot state as to the specifics.

Q. I have before me, Mr. Vorbeck, a copy of the decision reported at 35 Labor Arbitration Report, 459, pertaining to the Jewel Tea Company, HS Enterprises, Piggly-Wiggly, and Amalgamated Meat Cutters and Butchers Local of America, Local 283.

On Page 466 of the award it states:

"Jewel Company, Incorporated, and Piggly-Wiggly shall immediately cease and desist from requiring or offering to its meat people employees work after 6:00 P. M. on nights other than Friday, except behind closed doors."

"It is also my award that under the terms of the current agreement, the sale of fresh meat is restricted  
713 to the hours of 7:00 A. M. to 6:00 P. M. Monday through Saturday, except on Friday night between the hours of 9:00 A. M. to 9:00 P. M."

Is that correct, sir?

A. At that time?

Q. At that time?

A. I remember the arbitrator so found, yes.

Q. He found that that was it?

A. Yes.

Q. How long had you entered into such an agreement?

A. We entered into that agreement, because we entered  
Kenosha by purchasing two stores which were then subject to the—an agreement from the Amalgamated Meat Cutters, and respected the agreement as being in full effect with respect to our company.

That restriction was in there when we first entered into Kenosha as a Jewel operation.

Q. When did you enter into Kenosha as a Jewel operation?

A. I would say about four years ago, but I'm stretching my memory a little bit here.

714 Q. When was the most recent negotiation covering the Kenosha stores?

A. 1961.

Q. And as a result of negotiations the provision providing for market-operating hours was in the negotiation, is that correct?

A. Yes, sir. Although I did not, personally, handle the negotiation, that is correct.

Q. Mr. Vorbeck, let's discuss Local 189:

At the present time how many groups, in addition to Group 1, appear in Local 189?

A. There is a group called 1-A, a group called 2, a group called 3, 3-A and 4.

Q. What is the basis for the differentiation among the different groups?

A. There is a difference in wage rate which—in the first place the groups are geographically located somewhat separately. I cannot exactly tell you where Group 4 is, without reference to a current Local 189 contract.

715 Group 1-A was created as a result of the 1957 negotiations, and as I recall, it covers Kane County only, and permits the sale of meats, I believe, six nights a week up until 9:00 P.M.

Group 2 is the area covered by Rockford and Loves Park. It is really Winnebago County, but those are the only two principal cities.

Group 3, like Group 4, I'm not sure just where they lie, without reference to a contract.

Group 3-A pertains only to Decatur, Illinois.

717 A. As far as I know, the only difference between the groupings that you show here and the groupings that we show on our own contract is that we list only, in our own contract, only those cities where we have stores.

We have not recognized 189 outside of those cities.

By Mr. Dunau:

Q. Now, the negotiations which are conducted with the Defendant Unions, does Local 189 negotiate with the employer group at the same time as the other Local Unions negotiate with the employer group?

A. Yes.

718 Q. During the course of the negotiations are provisions discussed with respect to Local 189, at the same time those negotiations are conducted with respect to the other Local Unions?

A. That is the intention of the affiliated locals, to do that. The associated employers usually try to delay that to the end, because 189, having such a wide geographical distribution, has problems all of its own that we feel needs special discussion.

Q. As far as the position of the associated employers negotiations to 189 are deferred to the conclusion of the negotiations for all other Unions, is that correct?

A. Generally, yes, although we have concluded some elements of the 189 contract, as a part of the principal negotiations.

719 Q. Let's talk about the 1957 negotiations.

Did the first meeting of the employer group and the union group, in 1957, take place on August 20, 1957?

A. Yes, sir.

Q. Were those negotiations preceded by a letter from Mr. Kelly to Mr. Hargrave dated July 22, 1957, stating the union's desire to open the contract for negotiations?

A. I cannot put my finger on the letter right now, but I would assume so, because Mr. Kelly has always addressed his letters to Mr. Hargrave, and I have no reason to think otherwise.

Q. Did you acknowledge that letter of July 30, 1957?

A. I did.

Q. Was there a letter from Mr. Kelly to Mr. Hargrave, sir, dated August 8, 1957, stating that a meeting would take place at the union's office on October 20th for the purpose of presenting the contract demands of the union?

A. There was.

720 Q. Mr. Vorbeck, I show you a letter dated July 22, from Mr. Kelly to Mr. Hargrave, identified as Defendants' Exhibit No. 11, and also a letter dated July 30, 1957, from you to Mr. Kelly, identified as Defendants' Exhibit 12, and also a letter dated August 8, 1957, from Mr. Kelly to Mr. Hargrave, dated August 8, 1957, and I ask you whether those are the letters that were sent and received?

A. They are.

Mr. Dunau: I will offer those in evidence.

Mr. Christensen: No objection.

The Court: They are admitted.

(Said documents, so offered and received in evidence, were marked DEFENDANTS' EXHIBITS 11, 12 and 13.)

721 By Mr. Dunau:

Q. At the first meeting that was conducted on August 20, 1957, did the unions, through Mr. Kelly, present their contract demands that they wished to negotiate in 1957?

A. Yes, sir.

Q. I show you a document entitled "Local union negotiating committee covering Meat Cutters Local Union 189, 262, 320, 546, 547 and 638," which has been marked for identification as Defendants' Exhibit No. 14, and I ask you whether those are the unions' contract demands?

A. They correspond with the contract demands in my own file, and they are.

Mr. Dunau: I will offer Defendants' Exhibit No. 14 into evidence.

722 Mr. Christensen: No objection.

The Court: Received.

(Said document, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT 14.)

By Mr. Dunau:

Q. Now, during the August 20th meeting, had a representative been designated by the employer group to act as its spokesman?

A. August 20? I don't think so. My notes do not reflect such a representative had been designated.

Q. Did anything transpire at that meeting other than the explanation by the union of its contract demands?

A. Not to my recollection.

Q. Did Mr. Kelly speak for the local unions at this meeting?

A. To the best of my recollection he always has.

Q. From the time that you first began negotiating with the Meat Cutters locals?

A. Yes, sir.

Q. Mr. Kelly has always been the spokesman for the group?

723 A. Yes, sir.

Q. On August 29, 1957, did a meeting take place at your office attended by other representatives of the chain stores?

A. Yes, sir.

By Mr. Dunau:

Q. Who was present?

A. My notes show that Mr. William Bedell was present.

Q. Whom does he represent?

A. The Kroger Company. He is the labor relations representative out of Cincinnati.

There was also Mr. Lewis Carroll of the Kroger Company, the personnel manager of Kroger at that time in this office, the Chicago office.

There was Mr. Adolph Ernst, of the Great Atlantic & Pacific Tea Company, and Mr. Robert Cone, of the Na-



tional Tea Company, and Gordon Trunnell of the Hill 724 man Company here in Chicago, and I was the last representative that my notes show was present.

Q. You were the last representative?

A. Yes.

Q. Was this meeting held for the purpose of having this employer group explain its collective bargaining objectives for the year of 1957?

A. Yes, sir.

Q. And what collective bargaining objectives for the year of 1957 were arrived at by this employer group at this meeting?

A. Well, I don't know that I can say it that way—that they were arrived at. Some employee needs were listed.

Q. What were the employer needs that were listed?

A. No. 1, night openings; 2, female wrappers; 3, wholly automatic wrapping machines; 4, a flexible work day; 5, right to preprice off the premises; 6, the right to sell fresh frozen meats.

Q. With respect to the need pertaining to night openings, would you explain what that need was?

A. The same need which permeates this same law-725 suit, the need of supplying our customer shopping needs.

Q. What was the need pertaining to female wrappers, would you please explain that?

A. That is a cost factor, and it pertains to the fact that all apprentices, as they progress through the apprentice program, eventually become journeymen, so that would be the need of someone who never progresses to that of a journeyman, and the need for dexterity that goes with female hands.

This was a new labor classification which the industry was seeking, and undoubtedly it is very apparent that it still is.

Q. What would be the job of the female wrapper?

726 A. To start the wrap, and actually to complete the wrap, in 1957, I believe, on packages that have been cut, trimmed and prepared for sale by your meat cutters, and then for the females to complete the wrap so that they can put a label on that the customer could select when it was placed in the self-service case.

Q. What would be the wage rate for the female wrapper?

A. Less than that of an apprentice, but I could not give you a blanket answer on that because that is a negotiable item, of course.

Q. But it would be less than that of an apprentice?

A. We would so endeavor to get the lesser rate.

Q. Of course, that would be done by the female wrapper which is now done by the apprentice and the journeyman, is that correct?

A. That is correct.

Q. What is involved in the fully automatic wrapping machine?

A. That is a machine that completes the wrap from beginning to end without intervention of human hands  
727 other than to throw it on the machine. I am not quite familiar with the—I am not quite familiar at the present with all of the technological processes of the fully automatic machine, and I am not quite sure, without looking at a 1957 contract, whether we had the right to use the semi-automatic at that time, or not. I have a hazy recollection that we were granted that right as a result of prior negotiations, but this is just hazy.

Q. Was this collective bargaining objective, with respect to the fully automatic wrapping machines, sir, to get an agreement which would authorize the use of that machine?

A. Yes, sir.

Q. And do you now have such an agreement?

A. I believe so, sir.

Q. Was it obtained in the 1957 negotiations?

A. No, sir.

Q. Was it obtained in later negotiations?

A. In later negotiations.

Q. Please state what is involved in the flexible work day?

A. At that time the meat cutters had a day which 728 required you to bring a man in at 9:00 a. m., and no earlier, and release him at 6:00 p. m. If you brought him in by 9:00 or he had been there by that time, I think you could do it up to 8:30, but time and a half would be paid before 9:00.

We were looking for just a little greater flexible work day or flexibility, rather, and a right to bring him in at 8:00 o'clock, because actually in some areas we bring them in as early as 7:00, and if we would bring them in that would be at straight time and then release them at 8:00 and then work later as the completed regular work day.

However, the affiliated defendant local unions in this area had this absolute restriction of 9:00 to 6:00, and that would not give you time to prepare for the day's opening, or anything else.

729 Q. Assume that the market operating hours are from 9:00 a. m. to 9:00 p. m., would a flexible work day authorize the employer to bring the butcher in at noon and have him work through to 9:00 p. m.?

A. Yes, sir.

Q. The flexible work day you sought in 1957, would have authorized that, sir?

The Court: He may answer.

By the Witness:

A. The flexible work day which we sought at the 730 beginning of 1957, yes.

Towards the end, however, we compromised on a less flexible day.

731 Q. If you succeeded, in contract negotiations, of obtaining an agreement for market operating hours from 9:00 a. m. to 9:00 p. m., and if you also succeeded in obtaining an agreement for a flexible work day, would that authorize the employer to call in a butcher at noon and have him work through to 9:00 p. m.?

A. It would depend upon whether there was a third factor involved—whether a night premium was negotiated, and if so, how much.

Q. The first question is, sir: Would it have authorized you to call the man in at noon to work through to 9:00 p. m.?

A. Yes.

Q. If no premium pay were negotiated for the hours between 6:00 and 9:00, would that mean that that employee would work from noon to 9:00 p. m. at straight time rates?

732 A. Yes, sir, with a break, of course, for the meal.

Q. And that would be one hour out for lunch for which he is not paid?

A. It would be either lunch or supper, and it would be my assumption in this case that it would be for supper.

733 Q. And part of the negotiations then pertaining to market operating hours and the flexible workday would be to negotiate a premium rate for the hours between 6:00 p.m., and 9:00 p.m., is that correct, sir?

A. That is correct.

Q. If the premium rate for work after 6:00 p.m. were \$.25 an hour, how much would that mean to a butcher in

take-home pay if he were called in at noon to work until 9:00 p.m.?

A. \$.75 a day.

Q. So that his premium pay for working the hours between 6:00 and 9:00 would be \$.75 more if he did not work from 6:00 to 9:00, but would come from 9:00 a.m., and work to 6:00 p.m., is that it?

A. That's right.

Q. If the premium pay negotiated were time and a half and he came in at noon and worked until 9:00 p.m., would he receive a half time extra for each hour after 6:00 p.m.?

734 A. Yes, sir.

Q. And if no premium pay were negotiated for the hours after 6:00 p.m., would that mean that the employee would work from 6:00 p.m., to 9:00 p.m., at the same rate of pay he received before 6:00 p.m.?

A. Yes, sir.

Q. Please describe what is involved in the list as the pre-pricing off the premises?

A. There are a great many products, such as packaged weiners, all kinds of prepackaged luncheon meat, that are packed by the packer. It is a very simple matter for the packer to price. He could run it through a machine and mechanically price it, thereby saving time. How much, I don't know.

735 Q. Would it mean that employees presently working in the retail meat department of the stores represented by the Local Unions, would have that work performed by other employees not in the retail meat departments?

A. Yes.

Q. Please explain what is involved in the right to sell frozen meats processed off the premises?

A. Very few of the retailers have facilities for freezing



meats on the premises. However, your packers do have such facilities and will be very happy to supply our retailers with frozen fresh meats, which are ready-wrapped and ready for sale. All he would have to do is put them in his counters, display them for the customer to purchase.

The contract, as I recall it prior to 1957, permitted the selling of frozen fresh meats, providing the freezing was done on the premises, which was, of course, practically no value to the entire retail meat industry, but prohibited the sale of frozen fresh meats prepared off the premises.

Q. These six employers' needs which you have described, these are inter-related needs, is that correct?

Mr. Christensen: Will you repeat that?

By Mr. Dunau:

Q. These six needs you have described are inter-related needs, are they not?

A. No, sir.—Each need can stand on its own feet.

Q. The flexible workday was not related to night opening?

A. Not alone. It is still of value to you. You can extend it forward into the early morning hours, as well as through the late hours.

Q. Was it importantly related to night hours?

Mr. Christensen: I will object to calling for these comparative answers.

The Court: He may answer.

By the Witness:

A. Yes.

By Mr. Dunau:

Q. Now, isn't it a fact, Mr. Vorbeck, that everything about a contract negotiation is inter-related?

A. It is hard to give you an answer to that, sir. They take many, many factors into account and they do



737 have relationships of various values. That's all I could tell you.

738 Q. Would it be fair to say that one demand cannot be isolated from another in evaluating that?

A. No, I don't believe you can—you can isolate them.

Q. Do you isolate them, Mr. Vorbeck?

A. Yes. You take them in pairs, to some extent at least. Night operation and the flexible work day are very closely related.

Female wrappers and the fully automatic wrapping equipment are interrelated. You get one and you don't need the other.

Although the female wrapper might be of value to the smaller retail merchant where he could not possibly afford, due to lack of volume, the automatic.

Frozen meats, not related to anything else.

Pre-pricing off the premises, perhaps there are some relationships to the others. It is a form of labor cost saving.

Q. And it certainly, therefore, has relationship to the cost of labor?

739 A. Yes.

Q. That is of prime importance in the negotiation of the labor agreement, is it not?

A. Right.

Q. Mr. Vorbeck, did a meeting take place at the Bismarck Hotel on September 5, 1957, attended by the employer group and the Union group?

A. Yes, sir.

Q. Who were present on behalf of the employer?

A. The list was very long.

Joseph Quirk, and Robert Cone of National Tea.

Q. Is that C-o-n-e, sir?

A. Yes, and Quirk is Q-u-i-r-k.

Vern Carr and Gordon Trunnell of Hillmans.

Q. Would you spell Trunnell, please?

A. T-r-u-n-n-e-l-l.

Harry Rosenhagen, of Hi-Low.

Louis Carroll and James Parker of Kroger Company.

Adolph Ernst of the A&P.

740 C. T. Ausdall of the Piggly-Wiggly. I believe that is the Piggly-Wiggly Midwest.

Al Kapner, I'm not sure of the spelling. I think it is K-a-p-n-e-r, of Goldblatts.

Warner Richardson, better known as Dick, of Wieboldts.

Don Racz of Save-Way.

Myself, from the Jewel Tea Company.

Ted Meindel from Dell Farms.

Charles H. Bromann of the Associated Retailers of Greater Chicago.

James O'Connor of the Fair.

George Cokalis of Sure Save.

Charles Kissell of IGA.

Q. And I believe you already identified the representatives from National Tea and Hillmans?

A. Yes, at the very beginning.

Now, their list is the list of those who were present at the meeting concerned. Who others may have come in or departed there this list will not reflect.

741 Q. This is substantially the same group of employer representatives who continued to meet with the Unions throughout the—with the Unions throughout the 1957 negotiations?

A. That is correct.

Q. Who is Charles Kissell?

A. He was the representative who appeared on behalf of the IGA markets. I don't know too much about him, prior to his appearance. This was, I believe, his first appearance, at the negotiations. He claimed to represent some sixty odd IGA markets.

Q. Were those markets service or self-service?

A. I don not know. I rather thing self-service for the most part, from the positions they took.

Q. Do you know how many stores in 1957 comprised the Hillman chain?

A. No, sir.

Q. No idea?

A. Oh, I could give you an approximation.

Q. How about approximation?

A. Your own exhibit here should give you the  
742 answer.

Q. Unfortunately, this exhibit does not have Hillman.

A. I'm sorry, I have forgotten about that.

Q. And there was an objection to Hillman. I should like to know what you know about Hillmans, sir.

A. I think right around ten markets in this area. They are all large.

By Mr. Dunau:

Q. Service or self-service?

A. I, personally, don't know.

Q&A. How many stores did Goldblatts operate in 1957?

A. A very small number. Theirs are operated as a meat department in the department store, and I believe they deposited—it could be as few as two or three. There weren't many.

Q. Has Goldblatts since gone out of the meat department business?

743 A. That is my understanding.

Q. Do you know how many stores comprise the Dell Farm chain?

A. About five or six.

Q. That's a guess, isn't it; Mr. Vorbeck?

A. Fairly accurate. I heard Mr. Meindel at many meetings.

Q. All right. Did he operate service or self-service markets?

A. I have never been in one of his markets; I don't know.

744 By Mr. Dunau:

Q. How many stores did Save Way operate?

A. I don't know.

Q. That is Tony Racz's outfit?

A. I do not know.

Q. More than one or two?

A. I don't know.

Q. In the '57 negotiations what was Mr. Meindel's position, representing Del Farms, on the subject of night opening?

A. One note indicates that he was in favor of Friday nights. I have no independent recollection of what his viewpoint was.

Q. Mr. Vorbeck, in your deposition at Page 21, you stated with respect to Mr. Meindel:

"I think that his position could be stated he would operate at any hours he could."

Is that correct?

A. Knowing Mr. Meindel, I still think that is correct, yes.

Q. What was Mr. Cokalis' position, representing Sure Save, on night openings?

745 A. He was interested in some nights of operation. Just how many, I don't recall.

Q. Would you state that his position was very much like Jewel Tea's?

A. I think so.

Q. What was Kroger's position on night openings in the '57 negotiations?

A. Kroger was not then nor now too favorably inclined toward night operations. To them it was a cost factor. How much would we have to pay for the hours after 6:00 P.M.?

Q. In other words, they determined their position on night operations based upon how much it was going to cost to operate at nights?

A. Well, I assume that is one of the factors they take into consideration.

Q. And how much is it going to cost to operate at night, also includes how much you are going to have to pay butchers for working at night, is that it?

A. Naturally.

746 Q. In the course of negotiations, as the positions of the employer representatives were expressed, is it accurate to state that the cost of labor for a night operation was an important consideration in the position of the employers?

A. Yes.

Q. In order to operate a service meat market, Mr. Vorbeck, do you need the employees on duty?

A. Yes, sir.

Q. You cannot operate it unless you have an employee on duty; that's right, isn't it?

A. That is correct.

751 Q. Mr. Vorbeck, we discussed the August 29, 1957, meeting, at which you and a number of the representatives of a number of chain stores discussed certain employer needs.

Now, at the conclusion of that meeting on August 29, 1957, did you attempt to persuade Mr. Bromann, of the Associated Food Dealers to join with you in seeking ratification of those employer needs, or fulfillment of those employer needs, rather?

A. Did you say August 29th?

Q. That is right, the meeting, I believe, at Jewel Tea offices.

A. I don't believe I did on August 29th.

Q. Did you on August 30th?

A. Yes, sir.

752 Q. You say you did?

A. Yes. I at least endeavored to indicate an approach to the problem that I thought might work to his satisfaction and to the satisfaction of the other people or the Union representatives as well as ourselves.

Q. Did you write a letter to him on that subject?

A. I did.

Q. Is that the way in which you sought to persuade him, or did you also speak to him on that date?

A. I don't think I spoke to him.

This was more of a letter of explanation than it was of persuasion, and also a statement as to the general objectives of the changes in the current negotiations.

753 Q. Mr. Vorbeck, I show you a letter dated August 30, 1957, from you to Mr. Bromann, and ask you whether this is the letter which you wrote to Mr. Bromann?

A. Yes, sir, it is.

Mr. Dunau: I offer that letter in evidence.

Mr. Christensen: No objection.

The Court: It is received.

(Said document marked DEFENDANT'S EXHIBIT 15 was received in evidence.)

Q. Now, before the meeting which took place Sep-  
754 tember 5, 1957, was Warren Richardson of Wieboldt's selected by the employer group to act as the employer spokesman?

A. I don't know whether it was before or later. He was selected to act as chairman.



Q. Did he act in that capacity for one or two meetings?

A. Yes, he did.

Q. And thereafter for the course of the 1957 negotiations did the chairmanship rotate among other members of the employer group?

A. I would say it did, yes.

Q. So that for the 1957 negotiations there was no single spokesman for the employer, is that correct?

A. Not for the complete duration, no.

Mr. Christensen: Mr. Dunau, may I interject?

We sometimes have used the phrase "chairman" and sometimes "spokesman". I take it that actually there was no chairman in the technical sense of the word? I take 755 it that "spokesman" would more accurately describe what we are talking about, is that correct?

I just would like to have it cleared up, I don't know myself.

By Mr. Dunau:

Q. Mr. Vorbeck, does the employer group use the word "chairman" in speaking of the person who heads the employer group?

A. We have used that. We have also used the title, "spokesman".

Q. When you have used "chairman" or "spokesman" you are talking about the same thing?

A. That's correct.

Q. Are you talking about the individual who is designated by the employer group to express the employer position in the course of negotiations?

A. That is correct. There is nothing very formal in our proceedings insofar as his designation is concerned.

756 Q. Now, at the September 5th meeting was there, before that meeting, a caucus of the employer group?

A. There must have been. My notes indicate the Union did not come in to the meeting until after lunch.

Q. Who is Merrill S. Morse?

A. At that time he was the vice president in charge of all store operations for Jewel Tea, and I believe a director of the company.

Q. At the employer caucus on September 5th did Mr. Morse state that Jewel Tea would be willing to trade three hours on Saturday afternoon for three hours on Friday night?

A. My notes so indicate that he did.

Q. Did you receive a telephone call on September 9, 1957, from a Mr. Rosenbogen of Hi-Low?

Mr. Reporter, that is spelled R-o-s-e-n-b-o-g-e-n.

What is your date?

Mr. Christensen: September 9th.

The Witness: That should be Rosenhagen.

757 By Mr. Dunau:

Q. Will you spell it for us?

A. It is R-o-s-e-n-h-a-g-e-n.

Q. Did Mr. Rosenhagen state to you that Hi-Low was interested in one night of operation, but no more?

A. Yes, sir.

Q. Did the next meeting of the employer group and the Union group take place on September 11, 1957?

A. Yes.

Q. On that date did you take the position that there were three courses open to you on the subject of night operations?

A. I don't know whether I took it as a position or outlined it as a note to myself. I did outline three courses of action possible.

Q. Would you state what those three courses of action were?

A. No. 1, pay a differential to any store open at night.

No. 2, increase the total wage offered to the Union to the point they cannot refuse.

758 No. 3, litigate.

Q. Now, with respect to No. 1, to pay a differential to any store that would operate at night, would you explain that, please?

A. I would assume that I was thinking somewhat along the lines of our self-service settlement in which we paid \$7 across the board more for journeymen, I am speaking of weekly wage rate, than was paid to journeymen in the service market.

I had no specific amount in mind.

Q. Your thought, then, was that for a market which would be open at night, employees working in that market would be paid a higher wage rate than employees working in a market which was not open at night?

A. Either through that device or through an overtime differential. You can do it either way.

Q. You were thinking of money to induce people to work at night?

A. Right.

Q. The same, I take it, is true of the second alternative? Increase the total wage offered to the point  
759 where the Union could not refuse it?

A. Yes, sir.

760 Q. That is, that you would make an offer so high that the Union would not be in a position to turn it down?

A. That's right. Or, more stated affirmatively, that they would endeavor to sell it.

Q. That they would endeavor to sell it to whom?

A. To the membership.

Q. So that you would offer them a high enough wage proposal so that the bargaining group representing the Unions would try to sell night operation to the members, is that it?

A. Right.

Q. And the third, of course, litigate, was in the event that you were not successful in securing the concessions in negotiations that you would start a lawsuit?

A. Well, yes, that is correct.

Q. Now, on September 11th, at the meeting between the Employer group and the Union group did the Employer group make a proposal to the Union group?

A. Yes, sir.

Q. Would you state the terms of that proposal?

761 A. All employers, all except those employers represented by the Associated Food Retailers, offered to retain the present service and self-service contracts, with the following changes:

Now, there are eleven items in this offer. Do you want all of them repeated?

Q. Would you, please?

A. One, a term of two years.

Two, one night of operation per week in the markets, the night to be selected by the employer. Later on in the meeting, after recess, the employers agreed on Friday nights.

Three, flexible work day.

Four, a female wrapper classification with a wage scale—do you want the wage scale?

Q. No, that won't be necessary.

A. (Continuing.) Five, remove the restrictions on automatic wrapping equipment.

Six, wage increases for the journeymen, which is our principal classification, of \$4.00 the first year and \$3.00 the second. And appropriate smaller increases for the apprentices.

762 Seven, right to have delicatessen items pre-priced off the premises.

Eight, the right to sell all types of frozen fresh meat processed off the premises.

Nine, the right to supplement industry demands at any time.

Ten, to insert the following provision in the contract: "This agreement shall be binding upon the employer herein and its successors and assigns."

Eleven, the offer was made applicable to all Locals represented except 189, with this further classification, that those employers who have 189 contracts wish to discuss 189 as a separate issue.

Q. Now, Mr. Vorbeck, at this meeting on September 11th, did the Employer group agree that Mr. Bromann would present a proposal on behalf of Associated to Mr. Kelly at a later meeting?

A. I don't see any note to that effect. I see a note to the effect that Mr. Kelly had noted the separation between the Locals, and he wanted to hear from the industries.

763 Q. Mr. Vorbeck, would you look at your notes under date of September 13, 1957, page 3?

A. That's two days after this meeting, right.

Q. That is correct. That is a report that you were making to Mr. Hargrave, H-a-r-g-r-a-v-e.

A. Yes, sir.

Q. Does the paragraph towards the bottom of that page read:

"Pursuant to prearrangement, I called Mr. Bromann this morning to find out what offer he had made on behalf of the Independent Food Retailers to Mr. Kelly on Thursday afternoon."

Mr. Christensen: I will object to that. That is not an impeaching question.

Mr. Dunau: I am not suggesting it as an impeaching question.

The Court: Read the question.

(Question read.)

The Court: Overruled.

By the Witness:

A. That appears on Page 3 of my memorandum.  
764 By Mr. Dunau:

Q. Does that refresh your recollection that at the meeting on September 11th, the Employer group agreed that Mr. Bromann would meet with Mr. Kelly to present an offer on behalf of Associated?

A. I don't know that it refreshes my memory to the effect that the Employer group agreed that he would meet. I think Mr. Bromann decided that he would meet.

Q. And did he also tell you at that time that he would report the offer to Mr. Kelly?

A. I think he did, yes.

Q. And did he report the offer to you that he made to Mr. Kelly?

A. Yes, he did.

Q. And did he report it to you in detail?

A. I believe he did. Yes, my memorandum of the 13th reports an offer which he made.

Q. Did the next meeting of the Employer group and Union group take place on September 15, 1957?

A. Yes, sir.

Q. At that meeting did Mr. Bromann report to  
765 the entire group the offer he had made to Mr. Kelly?

A. Yes, sir.

766 Q. At that meeting, sir, did the employer group, with the exception of Associated, take the position that market operating hours would be at the discretion of the employer subject only to the qualification of no work on Sundays and holidays?

If you will look on page 5 of your notes, for September 18, I think you will find it.

A. You are correct.

Item 2 of that proposal says that hours of market opera-



tion should be directed by the employer, and also that there shall be no market operations on Sundays or holidays.

Q. Did Mr. Kelly at that meeting state that market operating hours was a negotiable issue?

A. I find one note to the extent that he had told a subcommittee that Friday night could be had for enough money.

Q. And would that make it, in your view, a negotiable issue?

A. Yes.

Q. Was a meeting held on September 26, 1957, between the employer group and the union group?

A. Yes, sir.

Mr. Christensen: What was that date again, 767° please?

Mr. Dunau: September 26.

Mr. Christensen: Thank you.

By Mr. Dunau:

Q. Was another meeting held on October 2, 1957?

A. Yes, sir.

Q. At the time of that meeting, were you in the process of working up—

Mr. Christensen: (Interposing.) Which meeting, please?

By Mr. Dunau:

Q. At the time of the October 2 meeting, sir, were you in the process of working up a proposal that market operating hours shall be from 9:00 a.m. to 6:00 p.m., Monday through Thursday, and on Saturday, and on Friday from 9:00 to 9:00, and Sunday closed?

A. On October 2?

Q. On October 2, yes, sir, and if you will look on page 5 of your notes for October 2, you will find it.

A. Yes, sir.

Q. Were you in the process of doing that on that date?

768 A. Yes, sir.

Q. Was there a meeting held by the employer group and the union group on October 16?

A. Yes, sir.

Q. Was there another meeting held between the employer group and the union group on October 22?

A. There was.

Q. And at that meeting was a proposal made by the employer group for all employers except Jewel?

A. Yes, sir.

Q. At the inception of the 1957 negotiations, Mr. Vorbeck, the agreement which was then in existence had the market operating hours provision which limited market hours from 9:00 to 6:00 p.m., is that not correct?

A. Yes, sir.

Q. That provision had been in the agreements at least since your first acquaintance with them, is that not correct?

A. Yes, sir.

Q. And that would go back to about 1945, is that not correct?

A. About 1945 or 1946, yes.

769 Q. Now, did the proposal for the entire employer group, made on October 22, leave the market operating hours provision which had existed until then, sir, unchanged?

A. Yes, sir.

May I check my notes for just a minute?

Q. Yes, please do.

A. Substantially it did, I am sure of that.

I believe the proposal provided for the sale of some products outside of normal market operating hours, such as fresh poultry processed on the premises, fresh pork, sausage, smoked ham and smoked butts.

Q. With respect to the sale of fresh meat, at least, it left the market operating hours provision as it had been for the past years, is that not correct?

A. That is correct.

Q. Had you been informed did an employer caucus take place prior to the meeting with the union on October 22?

A. It probably did, although my notes show that the union came in there at 11:00, and then at 11:10 we 770 asked them to leave, but I have no notation or notes covering the hours from 9:00 to 11:00 or 9:30, whatever it may have been.

Q. But there was an employer caucus sometime during that day, was there not?

A. I am sure that there was.

Q. During that day at the employer caucus, were you informed by the employer group that they planned to make the provision or to make the proposal which would not change the market operating hours provision?

A. Yes.

Q. And at this point Jewel Tea was alone among the employers in seeking a change?

A. That is correct, yes.

Q. What did you state to the employer group when they stated to you that they were no longer going to pursue an attempt to change the existing market operating hours provision?

A. On that date we informed the employer group that if the limitation on the hours at which we could market our products was not lifted or modified acceptably to the company, that we intended to litigate the question with 771 regard to the restriction.

I also informed them that Mr. Bromann had been informed of this on October 11, I believe it was, because I remember personally calling on him at his office and giving him a copy of our counsel's letter.

We also informed them that we would endeavor, if we could, to negotiate a satisfactory market operating provision, and if we could not do so, we felt compelled to find out what the courts would provide for us.

Q. Did you, on that date, to the employer group, read the letter from your counsel on the subject of market operating hours?

A. I did.

Q. Vorbeck, I show you what has been marked 772 as Defendant Unions Exhibit No. 16, a letter to your attention, from Winston, Strawn, Smith & Patterson, dated October 2, 1957, and ask you whether that is the letter which you read to the employer group at that meeting?

A. This is the letter.

Mr. Dunau: I will offer this into evidence, your Honor.

Mr. Christensen: No objection.

The Court: It is admitted into evidence.

(Said document, so offered and received in evidence, was marked DEFENDANT UNIONS EXHIBIT 16.)

By Mr. Dunau:

Q. Mr. Vorbeck, had you asked the firm to prepare this letter for you for use in negotiating?

A. Yes, and also to determine whether I had a valid basis for approaching the matter along those lines.

I never wanted to approach a union without some substance to my position. If I was off base, as I did not have time to research it myself, I wanted to be so informed 773 and then I would not explore the avenue any further.

Q. Did you, in addition to this letter from the law firm, receive another letter from them, or a memorandum from them, sir, covering this subject about this time?

A. Not that I recall.

Q. One purpose for this letter, however, was to use it in the negotiations, is that right?

A. And it would supplement my basic approach to it, yes.

Q. You stated that about October 11, sir, you had met with Mr. Bromann, and did you visit him at his office?

A. Yes, sir.

Q. And was the purpose in visiting him to inform him that if a change in market operating hours was not negotiated, that he and Associated would be named as co-conspirators in a lawsuit with the union?

A. It was not stated that way.

Q. Please state how it was stated.

A. I asked them if they would withdraw their 774 opposition to night marketing.

I stated that if some satisfactory market operating hours provision was not negotiated, that we would feel compelled to litigate this question, and that as principal opponents to extending the hours of operations, they undoubtedly would be named as one of the co-defendants, but I did not know just what co-defendants might be named at that point.

775 Q. Did Mr. Bromann at that point say "Why single out Associated, we're just one of the people on the contract, just like you"?

A. No, sir, I don't recall that. He said very little.

Q. He did not mention the fact that he and you and all other employers were in the same position?

A. Not that I recall.

776 Q. Now, at the meeting between the employer group and the Union group, was a proposal made by the employer group which left the market-operating hours provision intact?

A. Yes, sir.

777 Mr. Christensen: Are you on October 22, still?

Mr. Dunau: We are still on October 22nd. We were talking about the employer caucus; now we are talking about the meeting between the two groups.

The Witness: Yes, sir.

By Mr. Dunau:

Q. Did you, on that date, say to both groups that you thought the market-operating hours provision was illegal?

A. I did.

Q. Did you read it to the employer group, the letter that you had received from your law firm?

A. I read to both groups the letter.

Q. Did you say that you agreed with the entire proposal, employer proposal, except for leaving market operating hours intact?

You may find it in your report to Mr. Hargrove of October 23rd, on Page 3.

A. Yes, sir, I informed the group that Jewel was  
778 in basic agreement with the industry's proposal, with the exception of the fact that it did not provide for the right to operate our markets at night.

Q. Did you also state that the successful outcome of litigation would inevitably mean that market operations would automatically be open seven days a week, twenty-four hours a day?

A. I think I did.

Q. Did you also state that if any employer did not go along with Jewel, that employer would be named as a co-conspirator in a suit?

A. I don't recall making that exact remark, although if counsel can refer me to a note to that effect—

Q. Did you make it at that meeting, do you recall?

A. I don't think I made such a blanket statement.



779 Q. Did you make it at a later meeting?

A. I have always felt that anyone who did continue to insist that we be so restricted could be named as a co-defendant.

Q. So anybody in opposition to Jewel's position could be named as a co-defendant?

A. Yes, sir.

Q. Did you state that position to the employers, either at that meeting or at an ensuing meeting?

A. I think I made it pretty clear at various meetings.

780 Q. Was it your position, Mr. Vorbeck, that anybody, any employer who opposed Jewel's position on marketing hours could be named as a co-conspirator in a suit?

A. Any employer, yes, sir.

Q. And did you state that to the Employer group?

A. I am sure that I did.

Q. Now on October 22, did you meet separately with Mr. Kelly and other representatives of the Union?

A. Yes, sir.

Q. Did Mr. Kelly ask you what Jewel had in mind over and above the proposal which the other employers had made?

A. Yes, he did.

Q. Did you answer that night operation was not like self-service, so that no comparable wage differential could be offered for agreement on night operations?

A. Yes, sir.

Q. What did you mean when you stated that?

781 A. We paid \$7.00 per week extra for self-service.

It was my opinion, and I think the opinion of our operators, that while night market operations had extended—extended hours of operation had additional value, they were not as valuable to us as self-service, so that we had nothing in mind as profitable, shall we say, to either the Union or our employees as a \$7.00 weekly differential.

Q. In fact you were not sure that night operations would increase your profits at all?

A. I don't think I am the proper one to answer on that.

Q. You were not the one who was negotiating, Mr. Vorbeck?

A. Certainly, but we felt it was profitable enough that we were going after it.

Q. You had an opinion on the subject, did you not, Mr. Vorbeck?

A. Yes, sir.

Q. Was it your opinion that you really did not know whether you were going to make any more profit by 782 going to night operations?

A. I don't know that that's my opinion then or now. As of now, certainly it is not my opinion, but even then we wouldn't have been seeking it if it had not been so profitable.

Q. Was it a guess as to whether it would be more profitable?

A. I don't think so.

783 Q. Mr. Vorbeck, did you state to Mr. Kelly the wage increase you had been authorized to make by your superiors?

A. As of that time?

Q. As of October 22nd.

A. Just generally, I believe.

It was somewhat more than the industry had offered.

Q. Did you state to Mr. Kelly that the wage increase which was somewhat more than the industry had offered was based on obtaining agreement to female wrappers?

A. I told him I doubted very much whether I could make the same offer without female wrappers.

Q. So that the offer that was made was based upon getting agreement upon female wrappers?

A. That was true of us and true of the industry also at the time.

Q. And did you also state that if you could get no agreement upon female wrappers, you would make no wage increase beyond that of the rest of the industry?

A. I don't know that I stated it on that date, 784 and whether I ever stated it, I don't know.

Q. Did you state that if female wrappers were not agreed upon by the Union, that the wage increase that you had offered would have to be substantially modified?

A. I don't recall it. If you will refresh my memory—

Q. Look at Page 5 of your report to Mr. Hargrave of October 23, 1957, the first full paragraph.

A. The one beginning "The next question"?

Q. That is correct.

A. That is what I have already testified to that, but I will state it again.

"The next question which was directed to me was whether we would make the same wage offer if female wrappers were eliminated.

I told him that I doubted it very much, and that, moreover, they would find a lot of the other operators falling away from the industry proposal if they would eliminate female wrappers."

Q. Did Mr. Kelly inquire of you as to the premium 785 that you were willing to pay for work at night?

A. Yes, sir.

Q. What did you tell him?

A. Twenty-five cents per hour.

Q. Did you also discuss with him a guarantee of the number of employees who would be working at night?

A. Yes.

Q. Was the proposal for a twenty-five cent premium made in conjunction with the proposal for a flexible work day?

A. Yes, sir.

Q. That would mean, would it not, Mr. Vorbeck, that if the employee were called in at noon and worked till 9:00 o'clock, 9:00 P.M., he would get 75 cents for working at night, is that right?

A. That is correct, if the flexible work day were agreed upon to start at 12:00 noon.

Q. And the proposal for a flexible work day at that time was for an entirely flexible work day, was it not?

A. Yes, sir.

786 Q. The next meeting of the Employer group and the Union group took place on November 1, 1957?

A. Yes, sir.

Q. Prior to that meeting did you meet with Mr. Kelly at his office?

A. I did.

Q. Did you make to Mr. Kelly a proposal on behalf of Jewel Tea alone?

A. Yes, sir.

Q. Did that proposal on behalf of Jewel Tea alone provide for five nights of operation, 6:00 p.m., to 9:00 p.m., Monday through Friday, journeymen to be on duty Thursday and Friday, and the first employee to be called in on other days to be a journeyman?

A. Yes sir.

I would like to qualify that just a little bit. We didn't put any limitation on the hours of operation even on the five nights, just five nights of operation.

Q. Very good.

787 Q. I show you what is entitled, "Offer made to Union on November 1, 1957, on behalf of Jewel Tea Company, Inc," identified as Defendant Union Exhibit 17, and ask you whether this is the offer you made to Mr. Kelly on that date in his office?

A. Yes, sir, it is.

Q. Mr. Vorbeck, when did you make these notations on the proposal dated November 1, 1957?

A. I think they were made in the presence of the Union, most of them, at least.

788 Q. On the same day that it was offered to Mr. Kelly?

A. Oh, yes; yes.

Q. Now, would you read for us what the notation on the left topmost margin of the pages?

A. "Right to change to day operations only."

Q. Now, would you read what you have written opposite "Scope"?

A. Opposite is a small letter "b" and opposite that, "These wage scales are applicable to any market which is operated after 6:00 p.m., that is open for the sale of fresh pork, veal, lamb, mutton, and so forth, after 5:00 p.m."

789 Q. Opposite "term"?

A. Two years.

Q. Opposite "Nights of Operations"?

A. It says five, Monday through Thursday.

Q. And under that?

A. It says "Journeymen on duty Thursday and Friday, first employee called on other nights must be a journeyman."

Q. And opposite "Effective," that is November 25, 1957, is that not correct?

A. Yes.

Q. And under 4-A, opposite "8:00 A. M. to 9:00, Monday through Friday"?

A. Yes, and then opposite B, it says, "8:00 A. M. to 6:00 on Saturday," and then on the right-hand margin it says, "No work on holidays and Sundays."

That "4" pertains to the work day.

Q. Now, on the second page, opposite 7 or below 7,

there is a notation which is crossed out, and would you please state what that is?

A. It says, "50 per cent of increase retroactive 790 to 10-7; balance effective on date night operations began."

Q. And below that?

A. Below that or opposite Item 8 it states:

"50 per cent of increase effective 10-7-57; balance effective when store opens nights."

Q. Now, on Page 3, opposite 9, does that state:

"Combined service and self-service contracts"?

A. Yes, sir.

Q. And opposite 10, would you read that, please?

A. (Reading):

"No objection to settlement with industry without night operations at a lesser wage scale."

Q. And opposite 11, what does that say; would you read that, please?

A. (Reading):

"No more favorable terms to be granted to any other operator for night market operations unless the same 791 terms are granted to Jewel."

Mr. Dunau: I believe I have offered this into evidence. There were no objections, as I recall it.

Mr. Christensen: Would you ask him at the top of that page about the "alternative offer"?

By Mr. Dunau:

Q. On Page 3, Mr. Vorbeck, at the top of the page, sir, is "alternative officer," and would you explain that, please?

Perhaps if you went back to Page 2 you might be able to refresh your memory.

A. I think it must have applied to service markets.

Mr. Christensen: But what is the word that is written in there?



By the Witness:

A. The word is "used," and I think that offer was used, but I am just a little bit mixed up at the present moment.

Mr. Christensen: I have no objections.

792 The Court: It may be received into evidence.

(Said document, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT NO. 17.)

Mr. Dunau: Did I give your Honor a copy of that?

The Court: Yes, sir. You may proceed.

By Mr. Dunau:

Q. Now, looking at Page 3, of what is now Defendant Union's Exhibit No. 17, would you explain what is meant by the statement "No objection to settlement with the industry without night operations at a lesser wage scale"?

A. Simply that. If they wanted to settle at \$2 less a week, we had no objections.

Q. Do I understand you correctly—

A. (Interposing.) That is, if they were open at night, we expected that they would pay this scale.

Q. You were willing to pay more to be open at night, and you had no objection to the rest of the industry  
793 paying less on the wage scale if they did not open nights?

A. Yes. That is correct.

Q. That would be a very happy situation for Jewel, would it not?

A. That is correct, or we would hope so, at any rate.

794 Q. With the rest of the industry not operating at night, and Jewel operating at night?

A. If that should happen, but it did not happen with self-service.

Q. It did not happen with service?

A. I don't follow you.

Q. It didn't happen?

A. Well, I have no prior experience with service.

Q. What do you mean by Item 11, where it states, "No more favorable terms may be granted to any other operator for night market operations unless the same are extended to Jewel."

A. Just that. We did not object to them offering different terms; if we thought they were more favorable we wanted to be able to take advantage of them, but as long as they were not more favorable, well, that is it.

Q. You wanted Jewel to have the terms that were offered to any other employer?

A. Certainly.

Q. And that has been your position ever since 795 negotiations has begun or since you had participated in the negotiations?

A. Yes, sir.

Q. Has it been Jewel's position at all times, sir, that no employer is to have less favorable terms than any other employer?

A. I did not put it that way—"more favorable terms".

Q. No employer would have more favorable terms than any other employer?

A. That is right.

Q. So that uniformity of agreement was one of the objectives of Jewel?

A. Not necessarily, just not more favorable terms.

Q. You would not be unhappy if other employers had less favorable terms than you, but you would not permit other employers to have more favorable terms than you, and that is what it comes down to, isn't that correct?

A. We would endeavor—

Q. (Interposing.) And you would try to prevent that situation?

796 A. Well, I would say the "permit" is a pretty strong word.

Q. Isn't that written into the self-service contract at the present time?

A. Yes, sir, and I am the fortunate or unfortunate draftsman, whichever you see fit to call it.

Q. Didn't you draft that in the 1952 self-service agreement?

In other words, didn't you draft that in 1952, with the self-service agreement and when that was under the first negotiations?

A. Yes, sir.

Q. Didn't you, at that time, also draft the provision that if market operations in service departments were to be extended, the same expansion should be applicable to self-service markets?

A. Yes, sir.

Q. Now, still on November 1, 1957, did you and Mr. Morse, on behalf of Jewel, meet with Mr. Kelly?

Mr. Christensen: He testified to that.

Mr. Dunau: No, no, this is a separate meeting.

797 By the Witness:

A. A separate meeting? We made this offer at his offices, also.

Q. Yes, I know.

A. And I do not recall that anyone else was present, but I don't recall a later separate meeting. What I meant to say was that I do not recall who all else was present, but I certainly don't recall a later separate meeting.

Industry was not present when we first made the offer.

Q. I understand that, sir.

Now, will you please look at Page 6, sir, of your report to Mr. Hargrave of November 8, 1957?

Mr. Christensen: I did not hear you, counsel.

By Mr. Dunau:

Q. Will you please look at Page 6 of your report to Mr. Hargrave, of November 8, 1957?

A. Yes, sir.

Q. You referred, did you not, to an off the record committee conference with Mr. Kelly and Mr. Nielubowski?

798 A. Yes, sir.

Q. Does that refer to a meeting which was held later in the day after having seen Mr. Kelly in his office?

A. Yes, this was after the Union had joined the industry.

Q. So subsequent to the time that the Employer group and the Union group met, you had a further meeting with Mr. Kelly, is that right?

A. Well, this was a part of the further negotiations of the day, yes.

Q. But you were not meeting with the industry at the time you met with Mr. Kelly?

A. I don't think I was alone. I think I was with someone else.

Q. Mr. Morse was with you, was he not?

A. That is probably right, yes.

799 By Mr. Dunau:

Q. Mr. Vorbeck, do you now recall that your Mr. Morse and Mr. Kelly and Mr. Nielubowski met on November 1, 1957?

A. Yes, sir.

Mr. Dunau: Mr. Reporter, the spelling is N-i-e-l-u-b-o-w-s-k-i.

The Witness: I think that spelling is not quite correct.

By Mr. Dunan:

Q. Please correct it; I make no pretext of knowing 800 how to spell it.

A. I think it is N-e-i-l-u-b-o-w-s-k-i.

Q. Now at this meeting were you seeking to learn what to do to make Jewel's offer more acceptable to the Unions?

A. Yes, sir.

Q. And did Mr. Kelly tell you that he considered the Union's proposal unlivable?

A. He stated certain aspects of our proposal were unlivable.

Q. Was female wrappers one of the aspects that were unlivable?

A. Yes, sir.

Q. Was premium pay of 25 cents, which you were offering at night, unlivable?

A. Yes, sir.

Q. Mr. Vorbeck, at the meeting of the employer and the Union group on November 1st, towards its close, did Mr. Bromann state to you that if all the employers could agree on one night of operation that he would endeavor to induce his group to go along with such a proposition?

801 A. He did.

Q. Did you tell him that any offer that his group might make for one night of operation would be given serious consideration?

A. I am sure that I did.

Q. Did the next meeting of the employer group and the Union group take place on November 12, 1957?

A. Yes, sir.

Q. At this meeting—was there an employer caucus held?

A. Yes, but I wouldn't call it a caucus. There was considerable discussion among the employers.

Q. Did Mr. Kissell of IGA suggest a proposal to the employer group on night operation?

A. He had prepared one, and my notes contain it.

Q. What was his suggestion with respect to night operation?

A. His suggestion, which was never made to the Union, was two nights a week, Thursday and Friday, with the further qualification that if the holiday fell on Thursday, the opening night would then be on a Tuesday.  
802 Hours of 9:00 A.M. to 9:00 P.M., and all other days 9:00 A.M. to 6:00 P.M., no Sunday operations and no holiday operations.

He had quite a few other points, including the flexible work day.

Q. Did those other points pertain to various other subjects which would have to be agreed upon to conclude a satisfactory settlement?

A. Yes, sir.

803 Q. Now, during the discussion among the employer group on November 12, 1957, had Mr. Cone, of National Tea, prepared a proposal on behalf of all the industry except Jewel Tea?

A. He prepared it except Jewel Tea, but that wasn't the way it went.

Q. Correct, but the initial proposal prepared by him was one excepting Jewel Tea, is that correct?

A. That is correct.

Q. And as a result of the discussion held amongst the employer group, did you, on behalf of Jewel Tea, agree to go along with the industry proposal?

A. Yes, sir.

Q. And with respect to that proposal, did Mr. Bromann state that he would present it to his group on November 14, 1957, and report to the employer group on November 15, 1957, as to what his position would be?

A. Yes, sir.



804 Q. Mr. Vorbeck, I show you what has been identified as Defendant Union's Exhibit 18 for identification, a proposal made to the Union on November 12, 1957.

Do you recognize that as the proposal which was made on behalf of the industry on that date, excluding Associated Food Retailers, who was to take it back to its group to determine its position?

A. Yes, sir, this appears to be a Xerox copy or photostatic copy of my own notes.

Q. Now, was this proposal presented to the Union group at the meeting on November 12, 1957?

A. I think it was.

Q. Would you read what you have written at the upper left-hand margin on that proposal, sir?

A. (Reading:)

"Presented by R. H. Cone for the industry, except"

I will have to take it apart—I still can't read what  
805 the exception was. The punching on my notes has obscured it.

Q. Would the exception be Associated Food Dealers, which was going to take it to its group and report back?

A. It might well be, because later on in the heading we have excluded Associated Food Dealers.

Q. And the notation below the notation, sir?

A. "To be presented by Bromann to his group on the evening of Thursday, 11-14-57."

Q. Now, did the proposal of this pertaining to night operations, state that "Friday night meat operation effective December 2, 1957, male employee to be on duty during market operation"?

A. Yes, sir.

Mr. Dunau: I offer into evidence Defendant Union's Exhibit 18, for identification.

The Court: Any objection?

Mr. Christensen: No objection. Would you have him—as I understand this document, Mr. Dunau, it is sort of a continuing diary. Its offers were changed—he must 806 have worked from this from scratch, because it shows some of the items drafted on November 20th, and while he is at it—

I have no objection to the document, but I think it needs some explanation.

Mr. Dunau: You have no objection to its receipt?

Mr. Christensen: No. But I am asking these questions.

I would think that while we are on it, let's clear those things up.

By Mr. Dunau:

Q. Now, Mr. Vorbeck, on the first page of that document there is a set of wage rates opposite head meat cutter, journeymen, and self-service markets, and service markets. Were those the wage rates which were proposed on November 12th?

A. Yes.

Q. Now, then, in a set of wage rates opposite "apprentices," which has been crossed out, were the 807 crossed-out wage rates proposed on November 12?

A. I am inclined to think that they were not; that we increased those apprentice wage rates to the rates written out and not crossed out.

Q. So that the wage rates which are not crossed out are those which were proposed to the Union on November 12th?

A. That's right.

Q. The note is crossed out. Did that crossing out take place—

A. Prior to the presentation.

Q. Prior to the presentation?

A. Right.

Q. Now, opposite "4," there are wage rates opposite "female wrappers," which are crossed out, and then the

words "Two years," and wage rates at the right-hand margin which are not crossed out.

Were those the wage rates which the employers group agreed to propose?

A. The ones at the right are the ones actually proposed. They were modified as we actually discussed them.

808 Q. These were modifications which were made on Page 1 and then presented to the employers at their own meeting?

A. That is correct. That is a rather common practice.

Q. Very good. Now, on Page 2, sir, opposite 5, "Plus present amount of premium," is underlined, and then "12½ cents per hour."

Did you present that proposal to the Union on November 12th?

A. That was the then existing 6-day rate, 12½ cents premium. We did not change that at that point.

809 Q. This was just a classification—

A. That's right.

Q. (Continuing)—of what was presented by the employers' group to the Union group on November 12th?

A. Yes, sir.

Q. Very good.

Now, at the bottom, opposite 8, there are some words crossed out, and then the words "Effective December 2, 1957."

Was this, again, based upon discussions among the employers and then the presentation of this matter to the Union on November 12th, after approval?

A. Yes, we modified it before presenting it to the Union.

Q. Now, on Page 3, "Clean up time, self-service" is crossed out. Was that crossed out by the employer group prior to presentation to the Union?

A. I think it was.

Q. Then there is a notation opposite 11, "dropped

11-20-57," and crossed out. Was that a proposal which  
810 was retained by the employer group on November 12th,  
presented on November 12th, and then dropped in a  
meeting on November 20th?

A. Items 11, 12, 13, and I believe 17, were all formally  
presented on the 12th, and then subsequently dropped, on  
the 20th.

811 Q. Now, would you read the notation shown on the  
back of the last page of the proposal, sir, so that  
we may all know what that is?

A. Yes. This says, "Emmett said this offer is not  
as good as Kansas City. Parker answered, 'The dollar  
cost is about the same, all cost considered.' Ernest said  
the same (Kansas City offer was 5 and 4 and retained the  
employer insurance package) settled for 4 and 4 plus the  
Union's insurance package."

Apparently that refers to the Kansas City settlement  
that year.

That goes on and says, "Time off for death in the im-  
mediate family, three days; time off for jury duty".

That is all that pertains to that part, and then I made  
the further notation that "Glen Fishman of the Federal  
Mediation Conciliation Service had been assigned to this  
negotiation."

By Mr. Dunau:

Q. I offer Defendant Union Exhibit No. 18 into evi-  
dence.

Mr. Christensen: No objection.

812 The Court: It is admitted.

(Said document marked as DEFENDANTS' EX-  
HIBIT NO. 18 was received into evidence.)

By Mr. Dunau:

Q. Now, was there a further meeting held on November 15, 1957, between the Union group and the Employer group?

A. Yes, sir.

Q. On that day, sir, did Mr. Bromann say, on behalf of Associated, that he would go along with the industry's proposal for one night of operation, Friday night, beginning with the second year of the contract term?

A. They did before the negotiations were over, but they did not start out the day that way, no.

Q. But before November 15th was over, Mr. Bromann stated that he would go along with the industry's proposal for one night of operation on Friday night?

A. He stated that they would go along with the industry effective the second year of the contract, that they would agree to a Friday night's operation provided 813 that one-half of the market's personnel were on duty after 6:00 p.m.

Q. Now, you know that last part is incorrect, do you not, because that proposal was never made to the Union.

A. You may be correct, counsel. I am not sure—I beg your pardon—I am sure that was what we were informed in the Employer group.

I think that was the spot that I got confused on at the prior deposition, when you took my deposition, and I think you are correct.

Q. That the one-half complement was not a proposal ever made to the Union group?

A. No, sir.

Q. Did the Employer group, including Mr. Bromann, on November 15, 1957, propose to the Union group one night of operations on Friday night, a male employee to be on duty, sir, commencing with the second year of the contract term?

A. I am not sure about that meeting, sir. We made an

offer for Friday night, and whether the entire industry joined in it, I do not know.

814 Q. Mr. Vorbeck, I will read to you from your deposition, at Pages 226 to 227.

A. All right.

Q. And the question there is:

"Q. Well, but there was a proposal then on November 15, 1957, for night operations, which would either begin with the new contract term or at some future date after the commencement on the new contract term?"

"A. There was a proposal on November 15, 1957, I am positive of that."

"Q. To that effect?"

"A. Yes."

"Q. And Associated joined in that proposal with the rest of the industry, is that right?"

"A. I think they did."

Does that refresh your recollection as to whether Associated joined with the industry group on November 15, 1957?

A. I assume that they did. They joined with us at one point for one night of operation, so it must have been at this point.

816 By Mr. Dunau:

Q. Mr. Vorbeck, I show you what has been marked as Defendant's Exhibit 19, a proposal made to the Union on November 12th, with November 12th crossed out and 15 substituted, and with "excluding Associated Food Dealers" crossed out.

Is that the proposal which was made to the Union group on November 15, 1957, which included both the Associated and the rest of the employer group?

A. I think it is; yes, sir.



Q. And the x-ing out of that indicates that on that date they went along with the rest of the industry with the operation of one night operation, on Friday night, is that correct?

A. Yes, sir.

Mr. Dunau: I offer this into evidence.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked DEFENDANTS' EXHIBIT 19.)

817 Mr. Dunau: Your Honor, I will have a copy for you. I don't seem to have one in my file.

Mr. Christensen: Would you let the witness see the exhibit?

Mr. Dunau: Yes, sir.

Mr. Christensen: Under "night operation" at the side, the margin next to "night operation," appears in pencil "12-2-57," and then the date "December 2, 1958" is scratched out, or 1957 is scratched out, and 1958 is written in.

Now, I cannot tell from these notes just what the sequence of those corrections or changes were. Can you—

Mr. Dunau: We will try to straighten that out, Mr. Christensen.

By Mr. Dunau:

Q. Mr. Vorbeck, do you recall that on November 15, 1957, the proposal which was made on behalf of the entire industry group, including Associated, was for Friday  
818 night operation beginning December 2, 1958, which would be the second year of the ensuing contract term?

A. I think we discussed making it December 2, 1958, in order to keep the Associated Food Retailers in line with the industry.

Whether it went in that way, I do not now recall.

Q. Do you recall whether this was the sequence of events, Mr. Vorbeck:

On November 15, 1957, the proposal was for night operations to begin the second year of a contract on December 2, 1958, but on November 20, which was the next meeting, the date went back from December 2, 1958, to December 2, 1957?

A. That's entirely possible, because of the change in position on the part of the Association.

Q. So that would you say that it is likely that on November 15, 1957, the proposal was for night operation to be effective on December 2, 1958, and that on November 20, 1957, there was an alteration of position, which we shall go into later, and part of the alteration was that night operation would be effective December 2, 1957?

A. I think it is likely. I just have no present recollection on why we did that.

Mr. Dunau: I offer this Exhibit 19. I believe it is in evidence. Has it been received?

Mr. Christensen: I don't think it has been offered yet, but I have no objection to it.

The Court: It has been admitted.

By Mr. Dunau:

Q. Now, on November 15, 1957, when the entire employer group was in agreement on a proposal for night operation on Friday night, what was the Union's position with respect to that proposal?

A. I am not sure if my time sequence is right, but I have a notation here that they came in about 3:30 and outlined a counter-proposal which made no provision for night operations.

Q. So that the counter-proposal in effect rejected the proposal of the one night for operation, Friday night?

A. Yes, sir.

Q. Mr. Vorbeck, did you explain to the Union group why

it would be illegal for a provision for market-operating hours to provide for market-operating hours from 9:00 A. M. to 6:00 P. M. Monday through Saturday, but not illegal to have a provision which provided for market-operating hours from 9:00 A. M. to 6:00 P. M. Monday, Tuesday, Wednesday, Thursday, and Saturday, and 9:00 A. M. to 9:00 P. M. on Friday?

823 By Mr. Dunau:

Q. The question was did you explain, that's all.

Mr. Christensen: The question is, did you explain.

By the Witness:

A. I did not.

Mr. Dunau: That's the answer.

Mr. Christensen: He answered my question, and your last question. That's all he answered.

By Mr. Dunau:

Q. Did a negotiating committee between the Union group and the Employer group take place on November 20, 1957?

A. Yes, sir.

Q. On that date, did Jewel, National Tea, Hillman's, High-Low and Piggly Wiggly continue to propose to the Union night operations for Friday night?

Mr. Christensen: Would you read those names again?

(Question read.)

By the Witness:

A. Yes, sir.

824 By Mr. Dunau:

Q. On that day, November 20th, did Kroger and A & P, Goldblatt's, IGA and Del Farms withdraw from their proposal for night operations?

A. Well, I don't know whether they withdrew. They abstained from the offer made by Jewel, National, Hillman's, Piggly Wiggly and High-Low, yes.

Q. So the proposal made by the five employers, Jewel National, Hillman, Piggly Wiggly, and High-Low, was not joined in by Kroger, A. & P, Goldblatt's, IGA, and Del Farms, is that correct?

A. Yes, that is correct.

Q. Did the Union group reject the proposal of Jewel, National, Hillman's, High-Low, Piggly Wiggly, for night operations on Friday night?

A. Yes, sir.

Q. Did the Union group present to the Employer group a proposal of its own on that date?

Mr. Christensen: Did it what?

By Mr. Dunau:

Q. Did the Union group present to the Employer group a proposal of its own on that date?

825 A. Yes, sir. It was presented as an answer to the Independents' offer.

Q. Was it presented as a proposal to be acted upon by the entire Employer group?

A. Knowing that Mr. Kelly wants uniform contracts, yes.

Mr. Christensen: Just a minute.

When you say "Independents" do you mean Associated Food Dealers?

The Witness: Yes, sir, that's the Independents.

By Mr. Dunau:

Q. Mr. Vorbeck, doesn't Jewel want uniform contracts?

A. We want contracts which don't grant more favorable operations to any other operator than Jewel.

826 By Mr. Dunau:

Q. I show you, Mr. Vorbeck, what has been identified as Defendant Union Exhibit 20 entitled, "Proposal of Union negotiating committee to industry, November 20, 1957," and ask you if that is the proposal made by Mr. Kelly to the entire Union group on November 20?

A. It is.

Mr. Dunau: I offer in evidence Defendant Union Exhibit 20.

Mr. Christensen: No objection.

The Court: Admitted.

(Said document marked DEFENDANTS' EXHIBIT NO. 20 was admitted into evidence.)

827 Q. The negotiations took place between the employer group and the Union group, based on the offer made by the Union group, did they not?

A. I'm not clear on that question. All negotiations took place on all offers that were made by both the employer group and the Union group.

Q. Was this offer made by the Union group on November 20th, sir, the basis for the agreement reached in the 1957 negotiations?

A. I don't know that the final agreement was identical to the Union's proposal. It may have been.

Q. I am sorry; I did not hear that last part?

A. It may have been.

Q. Would the variations have been minor, sir?

A. Probably. I think we were pretty close to the final agreement at that time.

Q. Now, on November 20, 1957, did Mr. Kelly ask each of the employers present what their position was on his proposal?

A. He certainly did. He polled us.

828 Q. What did Associated respond—Mr. Bromann, on behalf of Associated?

A. Mr. Bromann responded O. K.

Q. And Dell Farm?

A. I cannot find a notation opposite Dell Farm.

Q. Do you recall whether they agreed or disagreed?

A. I have no recollection. Just a minute, or just a second sir, and let me see if I can see if Dell Farm is represented on that date.

Yes, Mr. Meindel was there, and I think he must have concurred, but I have no notation as to what action he actually took.

Q. What did National Tea say?

A. National Tea said, "Deferred until Friday."

Q. They were deferring their action?

A. Yes.

Q. And what did A & P say?

A. The same answer.

Q. Deferred until Friday?

A. Yes.

829 Q. What did Kroger say?

A. Kroger said O.K.

Q. And IGA?

A. IGA said O.K.

Q. Goldblatts?

A. Goldblatts deferred until Friday.

Q. Hillmans?

A. Hillmans? No.

Then there is a further notation of "Limited to Chicago local Unions," and I believe Hillmans is not outside of the immediate metropolitan Chicago area.

Q. What was Sure Save's position?

A. No position indicated.

Q. Hi-Low?

A. Hi-Low was not represented.

Q. Wieboldts?

A. I want to say, on Hi-Low, that they were not rep-



resented at that time, or at the time this polling took place, which was at 7:45 at night.

Wieboldts said O.K. at this point.

830 Q. And Jewell?

A. No, and we stood by our offer of the morning.

Q. You say that some of the employers deferred their responses to Friday, and do you know what their responses were on Friday?

A. I am not sure whether they were on Friday or on what day, but I do know that Goldblatts and A&P ultimately expressed agreement.

National Tea later joined with us in a letter proposal or like proposal.

Q. Did ultimately all employers accept the Union's proposal made on November 20th, except National Tea and Jewell Tea?

A. I think Wieboldts objected at the very last moment, too.

Q. Then there were three employers who were objecting?

A. Yes, sir.

Q. Now, did you meet with Mr. Kelly at his office on November 22, 1957?

A. Yes, sir.

831 Q. Did you bring to Mr. Kelly or did you present to Mr. Kelly, rather, a proposal on behalf of Jewell Tea covering all subjects and providing for one night of operations on Friday night?

A. Yes, providing for one night of operations of all locals, except 189, and the Group 1 of 189, Friday night only.

Q. Did you ask Mr. Kelly to submit that proposal to the membership to be voted on by the members at the contract ratification meeting?

A. Yes, sir.

Q. Did Mr. Kelly state that he would present that proposal made by you to his members?

A. Yes, sir.

832 By Mr. Dunau:

Q. I will show you a letter dated November 22, sir, from you to Mr. Kelly, which has been marked as Defendant Union's Exhibit No. 21, and an offer made on November 22nd, or at least it is a paper entitled "Offer made November 22, 1957, on behalf of Jewel Tea, Incorporated," and that is marked as Defendant Union's Exhibit 21-A, and I ask you whether or not this letter and this offer was made to Mr. Kelly on November 22nd?

A. Yes, sir, they were.

Mr. Dunau: I offer Defendant Union's Exhibits 21 and 21-A into evidence.

The Court: They are admitted.

(Said documents, so offered and received in evidence, were marked DEFENDANTS' EXHIBITS 21 and 21-A.)

By Mr. Dunau:

Q. Now, does the proposal, which you presented to Mr. Kelly on November 22nd, provide for female wrappers as well as night operations?

833 A. Yes, sir.

Q. Did you make a telephone call on the morning of November 23rd to Mr. Kelly?

A. I don't know whether I did or whether he called me.

I know I talked to him about that time after this offer was in, and I think that was on a Saturday.

Q. In that telephone conversation, did you ask Mr. Kelly to submit to the membership, at the contract ratification meeting, the offer that Jewel made, including both night operations and female wrappers, but if that offer were

not accepted by the membership, to submit to the membership an offer confined to female wrappers?

A. Confined to female wrappers?

834 Q. Well, dropping night operations, but including female wrappers and the other items?

A. My recollection is very hazy on this.

I recall stating I have the answer to that on my deposition that we would drop—we would drop one or other of the items, but I thought it was just the reverse—the female wrappers rather than the nights.

835 Q. You were here during the course of the trial,

Mr. Vorbeck, at which Mr. Kelly testified that he had submitted to the membership Jewel's offer for female wrappers, plus night operations?

A. Right.

Q. Do you recall that? Do you recall that he also testified that he then submitted to his membership Jewel's offer for female wrappers without night operations?

836 Q. Mr. Vorbeck, at the present time do I understand you to state that you do not recall what the alternative offers were that you asked Mr. Kelly to submit to his membership?

A. That is correct. I got mixed up, and I don't  
837 recall them today.

Q. So that you don't now remember whether if Mr. Kelly's membership rejected the offer for female wrappers and night operations, whether the alternative offer was one for female wrappers only or for night operations only?

A. No, sir, I don't.

Q. Did you ask Mr. Kelly to inform you of the outcome of the contract ratification meeting?

A. Yes, sir.

Q. Was such a meeting of the membership held on November 24th?

A. I am sure there was. I wasn't there.

Q. Did you receive a telephone call from Mr. Kelly on November 24th?

A. I received one. I am not sure whether it was on the 24th or 25th.

Q. And what did Mr. Kelly say to you on the 24th or the 25th?

A. He told me that both of our offers—and I am sure there was a second offer, which was handled by telephone with Mr. Kelly—were rejected. What I am not clear 838 on is what it was.

Q. I understand, sir. Now, after you were informed that the membership had rejected both of the Jewel offers, did you on behalf of Jewel, either that day or the next day, inform Mr. Kelly that the Jewel was going to accept the agreement under the duress of a strike vote?

A. I was first informed that a strike vote had been taken. I think Mr. Kelly told me at the time, or if he didn't volunteer it, I think I asked for the information, and I am pretty sure that he told me that at the time. And subsequently we did decide—I am not sure on the date. I think we did it by letter—yes, we did by letter—accept the settlement under the duress of a strike vote.

Q. Now, Mr. Vorbeck, was the method that was employed for the negotiation, early negotiating the 1957 agreement, approximately the same method that is employed each year when a contract is negotiated?

A. Yes, with variations depending on the varying positions of the employers, and even some variations depending on Union demands.

839 Q. But the pattern?

A. The pattern is the same.

Q. As I understand it, each Local Union is represented at the negotiations by its officers, plus the business agents?

A. Yes.

Q. And would that amount to about 23 representatives on behalf of the Local Unions at these meetings, usually?

A. Not always that large a group. Always at the start, yes. They have them—every business agent appears to attend, and you can pretty well tell when the negotiations have reached a critical stage by the fact that they are back again.

Q. Now, has Mr. Kelly been the spokesman for the Union group, I believe you stated, for as long as you know?

A. All the years that I had been there he has been there.

Q. Now, does Mr. Kelly, to begin negotiations going, send a letter to the employers setting a date for the first meeting?

840 A. Yes. Frequently that—he sets the date for the demand meeting—

Q. That is the meeting—I am sorry, go ahead.

A. Then usually by mutual agreement, although not necessarily, the first meeting date would be agreed upon between the Union representatives and the Employers and he will announce it, because not all employers attend the demand meeting.

Q. So that the first meeting that he sets is one at which he presents to the Employer group the Union demands, and then the Employer group in common set a meeting to begin to negotiate the demands?

A. I would say that is correct.

Q. Now, does the Employer group designate a chairman or a spokesman to act on behalf of the Union group—I am sorry—designate a chairman or a spokesman to act on behalf of the Employer group?

A. To the extent that the employers can agree on the position to be taken, he speaks for all of us.

Q. Now, you had a single employer spokesman in 1959 negotiations, did you not?



A. Yes, sir.

841 Q. And a single employer spokesman in the 1960 negotiations?

A. Yes, sir.

Q. And when he takes a position he is speaking on behalf of all the employers, unless a specific employer says, "You are not speaking upon my behalf", is that it?

A. That is the understanding.

Q. So unless there is a specific disclaimer by a particular employer, what the chairman of the Employer group states is said on behalf of all the employers?

A. With one other exception. If the employer has no representative present in the negotiations, we normally do not speak for that employer.

Q. So that the chairman speaks upon behalf of those representatives who are present at the meeting?

A. That is correct.

Q. And unless a representative at the meeting specifically disclaims the position taken by the chairman of the Employer group, the chairman is speaking in his mind?

842 A. That is our intention.

Q. Very good.

Now, before the beginning of negotiations will the representatives of the Employer group meet amongst themselves to explore the objectives that they seek in negotiations?

A. Yes, sir.

Q. And during the course of negotiations will the Employer group caucus from time to time to determine what positions it should take in the course of negotiations?

A. We endeavor to.

Q. And does the Union group likewise caucus from time to time during the course of negotiations to determine the position the Union group will take in the negotiations?

A. I am sure they did.

Q. Now, when the Employer group and the Union group



reach agreement, are the terms of that agreement submitted to the membership of the Local Unions for ratification?

A. To the best of my knowledge, they are.

843 Q. When the membership ratifies an agreement, does one representative from each Local and one representative from each employer meet as a committee to draft the precise language to reflect the understanding that has been reached?

A. Yes. That's substantially correct.

844 Q. Now, when a draft in final form is agreed upon does Mr. Kelly send it to a printer to get a galley proof made?

A. Yes, sir.

Q. Does Mr. Kelly then send the galley proof to each of the employer representatives to check it over?

A. I don't know just to whom he sends it. He has always accorded me that courtesy.

Q. And are corrections made then, based upon—of the galley proofs, based upon either an employer representative or a union representative?

A. Yes, sir.

Q. When a galley is finally approved by the Employer and the Union group is the contract then set up in formal printed form?

A. Yes, sir.

Q. And do the employers and the Local Unions then sign separate but identical agreements?

A. In every instance to the best of my knowledge, with the exception, the single exception of Local 189.

Q. Local 189, at the conclusion of the negotiations, has problems of its own which still remain to be negotiated out?

A. Yes.

Q. So those are concluded at a time usually substantially later than the negotiations involving the other Unions?

A. We normally knock out an agreement within the next 30 days.

Q. At the conclusion of those 30 days approximately, an agreement is then drafted to reflect the understanding pertaining to Local 189?

A. Yes, sir.

Q. Now, prior to the ratification of an agreement by the membership, does each employer remain free to accept or reject the agreement that has been reached by the Employer group and the Union group?

A. I assume that you do. I certainly have always assumed I had the right to reject it on behalf of our company.

Q. And on behalf of your company, notwithstanding an agreement with the Union group and the Employer group, if you were dissatisfied you continue to negotiate an agreement to your liking, is that correct?

846 A. Somewhat. The die is pretty well cast. You know, it is a pretty hopeless proceeding to attempt further negotiations.

Q. Now, have agreements been uniform since the time you began to participate in negotiations in 1945?

A. I cannot speak with accuracy with respect from 1945 to about '52, although I think the answer should be substantially, yes. I don't know of any variations.

847 Q. And certainly from 1952 on, you are clear that there were no variations?

A. Clear with respect to self-service, which was then our primary interest, yes.

Q. From the time you started to assist Mr. Hargrave in negotiations, have negotiations been conducted on this joint basis, employer group and Union group meeting together?

A. Yes, sir.

Q. And of course you don't know what happened prior to the time that you began negotiating in 1945?

A. Just by hearsay.

Q. Now, prior to 1957, had Mr. Bromann acted as Chairman or Spokesman on behalf of the Employer group?

A. He never did at any session that I attended, except to represent his own individual group. I mean he might make a presentation on behalf of the Association, but I cannot ever remember him making a presentation on behalf of the entire industry.

Q. Are you saying that you don't remember that he did, or—

A. I don't remember that he did. It's possible.

848 Q. Now would Mr. Bromann be acceptable to the entire group?

A. Certainly. He is a very able negotiator.

851

Session of Monday, November 5, 1962.

GEORGE P. KOKALIS, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Dunau.*

Q. Would you state your full name, please, Mr. Kokalis?

A. George P. Kokalis.

Q. Is that spelled K-o-k-a-l-i-s?

A. Yes, it is.

Q. Where do you live, Mr. Kokalis?

A. 3180 Lake Shore Drive.

Q. Here in Chicago?

A. Chicago.

Q. Did you operate a chain of stores known as Sure Save Food Marts in Chicago in 1957?

A. Yes, I did.

Q. Were you president of Sure Save?

A. Yes, I was.

Q. How many stores did you operate in Chicago in 1957?

852 A. Eight.

Q. Did you operate meat departments in these stores?

A. Yes, but not in all of them. We had some concessions.

Q. Now, did you operate four self-service meat departments?

A. Yes, we did.

Q. Did you lease three meat departments in your stores for service operation by others?

A. Yes, we did.

Q. And as to the last, the eighth store, was there a meat department in operation in that store?

A. It was a separate set-up completely. We had a common entrance, but what was it. We did not operate the meat department.

Q. And you did not lease your space?

A. No, sir, we did not.

Q. So that, as I understand it, you had four self-service markets in 1957, but you operated three service markets which you leased for operation to others?

A. Yes, sir.

853 Q. When did you begin the operation of Sure Save Food Marts?

A. 1947.

Q. And have you since sold that chain, sir?

A. Yes, I have.

Q. When did you sell it?

A. November of 1961.

Q. To whom did you sell it?

A. National Tea Company.

Q. Now, at the time you sold the chain how many stores were in operation?

A. Eleven.

Q. And in those eleven stores how many meat departments were operated on a self-service basis?

A. Ten.

Q. And did you operate a meat department in the eleventh store?

A. Yes, I did, but it was not self-service.

Q. Was it a service market?

A. Yes, it was.

Q. At the time that you sold the Sure Save Food Mart to National Tea, what was the annual dollar volume of meat that you purchased on behalf of Sure Save?

A. I would have to—I can't really answer that. All I can remember offhand would be the total volume of business, but I cannot remember the meat volume. I can give you an approximation. About, a little over four million dollars.

855 Q. Four million dollars?

A. Yes.

Q. That would be the approximate—

A. The approximate figure.

Q. (Continuing)—dollar volume of the meat?

A. That's right.

Mr. Christensen: Is that purchases or sales?

The Witness: Sales.

By Mr. Dunau:

Q. And that was an annual period, sir?

A. Yes, sir.

Q. Now, before you began to operate Sure Save, would you tell us what you did?

A. I was General Manager of Grocerland Cooperative in Chicago.

Q. What did you do as General Manager of Grocerland?

A. Well, that's a pretty broad job there. I did almost everything. Buying, selling, taking care of a number of



stores which at that time, when I left, were one hundred fifty-five.

Q. Did the buying entail purchases of meat?

A. No, sir.

Q. It did not?

A. No.

Q. How long did you occupy this position for Grocerland?

A. Nine years.

Q. Were you a member of Associated Food Dealers at the time you operated Sure Save?

A. Yes, we were.

Q. Were you a Director in Associated?

A. Yes, I was.

Q. Was the employment of butchers by you governed by a collective bargaining agreement by the defendant local Unions in this case?

A. Well, an agreement that was signed by the Association, but not by Sure Save.

Q. The employment terms were determined by that collective bargaining agreement?

A. Yes, sir.

857 Q. Were the market-operating hours of your stores determined by that collective bargaining agreement?

A. Yes, they were.

Q. In 1957 were you in favor of operating your meat departments after 6:00 P. M.?

A. Yes, I was.

Q. Based on your experience, Mr. Kokalis, would you please state whether in your opinion fresh beef, veal, lamb, mutton and pork can be sold in a self-service meat department between the hours of 6:00 P. M. and 9:00 P. M. without employees on duty?

A. I would have to give an answer to that based on my own company's thinking on the matter.



Q. Would you give us an answer based on your  
858 thinking on the subject, sir?

A. Well, the answer would have to be no.

Q. And why not, sir?

A. Because I feel that we have to take care of our customers at all times, particularly in the areas that we were in, merchandise by the consumer in a self-service counter would be so disheveled and disarranged that it would look very bad.

I would never approve of running our meat departments after those hours, or any hours, for that matter, without personnel on the job.

Q. Would stock become depleted if there were no personnel to replenish it?

A. Yes, I would think so.

Q. Would you be able to provide custom cutting for customers?

A. No, I would not, unless I have a man on the job.

Q. Do customers require help in the course of selecting meats?

A. Well, sometimes they do.

Q. Do they ask questions of the butcher as to what meats they should purchase?

859 A. Sometimes they do.

Q. And for what purposes?

A. Special cuts, or how to prepare meat items at times, and possibly the prices, and so on.

Mr. Dunau: No other questions.

*Cross-Examination by Mr. Christensen.*

Q. Mr. Kokalis, from approximately 1938 to 1947, you were the General Manager of Grocerland Coop?

A. Yes, sir.

Q. Prior to that time, what had you done?

A. I was in the retail business. I had a store at 5300 Lockwood and Irving Park.

Q. A grocery store?

A. Grocery and meats.

Q. Groceries and meats?

A. Yes, sir.

Q. How long did you run that?

860 A. From 1926 to 1943.

I was running the store while I was in the employ of Grocerland, for a period of time also.

Q. And before you had that store, what was your business experience?

A. Before 1926, sir, I was not in business. That was my first venture. I was going to school prior to 1926.

861 Q. You opened this store then, a small store, I take it?

A. Well, that was one of several stores that I opened as fruit and vegetable stores.

As years progressed we put in groceries, and then meats and so on.

Q. When did you first put in meats?

A. I believe it was in 1936.

Q. 1936?

A. That's right.

Q. Did you operate that meat department as a concession, or was it—

A. No, sir. It was my own meat department.

Q. That was a service department?

A. Service, yes, sir.

Q. When is the first time you had any experience with self-service meat departments?

A. In 1955.

Q. 1955?

A. Yes, sir.

Q. Approximately how much investment is required to set up a self-service counter?

862 A. As of now?

Q. Well, as of now or as of 1955?

A. I don't quite understand your question. To set up a counter or to equip a meat department?

Q. To equip a meat-department for self-service.

A. To equip a meat department?

Q. Yes?

A. Well, I would say it is between forty and fifty thousand dollars.

Q. It is a considerably greater investment than is required in a service department?

A. Yes, sir.

Q. Now, I take it there was a hiatus in which you were not in the grocery business yourself from approximately 1943 to 19—

A. To 1947.

Q. And 1947?

A. Yes, sir, four years.

Q. You sold out your store and you then, for the years 1943 to '47, was simply the general manager of Grocerland Cooperative?

A. Yes, sir.

863 Q. The Grocerland Cooperative was a buying organization, was it not, for a group of independents?

A. Yes, it was.

Q. And you did not buy meats, just groceries?

A. That's right. Groceries and produce, fresh fruits and vegetables.

Q. Now, have you ever had any experience of operating a self-service meat department without butchers being on duty?

A. No, sir.

Q. In a self-service meat department the prices are on every piece of meat that is on display, are they not?

A. Yes, they are.

Q. Unless a customer is illiterate it is not necessary for a customer to talk to a blessed soul about the price of

any of the products that are displayed for sale, isn't that correct?

A. I cannot answer that, no, because there is confusion sometimes between the weight and the pricing on the packages. So there are questions asked on occasions. I 864 would not say that all the customers would do that.

Q. Mr. Kokalis, doesn't every piece of meat have a price on it?

A. Yes, it does.

Q. And it has got a dollar sign or a cent sign in front of it, has it not?

A. Yes, it has. Yes, it has.

Q. Now, your opinion as to what would happen in a meat department, self-service meat department that is operated without butchers being on the premises is purely your speculation as to what would occur if such an event happened, is it not?

865 By Mr. Christensen:

Q. Isn't that right? You have never seen a department in operation, you have had utterly no experience as I understand your testimony—

A. That is correct.

Q. (Continuing)—and your opinion therefore, is far less valuable than that of men who have actually witnessed such an operation, isn't that correct?

A. That would be so.

Q. Now you say you think a meat department might become depleted, you testified. You have never seen that occur, have you?

A. I have seen it occur during the day, even when butchers are on.

Q. You have never seen it while butchers were not on duty?

A. Because we have never operated such a store.

Q. Whether it would become depleted would depend in part upon the judgment of the manager in stocking the case before the butchers went off duty, wouldn't it, as to how heavily he stocked it?

866 A. Well, you could still be out of merchandise if there was any business being done after 6 o'clock.

Q. Well now, Mr. Kokalis, let me give you an opportunity to think about that again.

Q. If he put two steaks in there and the only business done after 6 o'clock was one steak, the case would not be depleted, would it?

A. Well, to my way of thinking it would be.

Q. It would be depleted by one steak?

A. Because the choice is not there as far as the customer is concerned.

Q. If you put five in and one was taken out, the case would not be depleted, would it, except by one steak?

A. Well, again there is a difference of opinion from the standpoint of how I would want my store stocked.

Q. I didn't ask you how you wanted your store stocked.

A. My thinking would be that it is depleted if it only had five steaks in there.

Q. The minute one steak is taken out it is depleted 867 by that much?

A. That's right, because five steaks in the first place, would not be enough.

Q. How many would be enough?

A. Well, twelve, fifteen.

Q. Fifteen?

A. That's right.

Q. Now, in the operation of any stores you operated, the minute one—and I am assuming that it was fifteen steaks in there—the minute one steak was taken out did your butcher run back and get another one?

A. No.

Q. So you are willing to suffer a minor amount of depletion with butchers on duty, aren't you?

A. Yes, I am.

Q. All right, that answers it.

Now, in the time you operated Sure Save from 1947 to 1961—

A. Yes, sir.

Q. (Continuing.) —was all of the dealing Amalgamated Meat Cutters Unions with respect to night operations conducted on your behalf by Mr. Bromann of the 868 Associated Food Dealers, or did you sometimes participate?

A. I sometimes participated myself.

869 Q. What years did you participate yourself, Mr. Kokalis?

A. I can't recollect, except that I know I was there, I think, in '56, '57, and '58. And not all of the meetings; on occasion.

Q. You think you were there in 1956?

A. And I know I was there in 1957.

Q. In '57?

A. Yes, and '58.

Q. And in '58?

A. Yes, sir.

Q. Now, who else was present in '58?

A. I can't remember, really.

Q. Anyone?

A. Mr. Bromann was, and I think from the chains, Jewel Tea was represented, A & P was represented, Kroger was represented, Hi-Low was represented.

870 Q. Now, in 1957, did you wish to have night operation in your meat departments?

A. Yes, I did.

Q. Did you tell Mr. Bromann you wished to have it?



A. Yes, I did.

Q. Did Mr. Bromann tell you he couldn't make a fight for it?

A. I don't remember his exact words; no, sir, I do not. I know that we went in and talked about night operation, and Mr. Bromann was in accord with it.

Q. And do you recall that a vote was taken amongst the employer members?

A. I'm sorry, I can't recollect the vote.

872 Q. You have said that you favored night operations?

A. Yes, sir.

Q. Did you keep that mental state locked up in yourself, or did you communicate that view to someone?

A. I communicated it to the entire body, if I remember correctly.

Q. Did you communicate it to Mr. Bromann?

A. Yes, I did.

Q. Did you communicate it to Emmett Kelly?

A. Yes, I did.

Q. And did you ask Mr. Bromann to act as your agent in securing—

A. Yes, I did.

Q. (Continuing.) —night operations?

A. Yes, sir.

Q. Did you vote for or against night operations in a poll?

A. I voted for night operations.

873 Q. When you told Mr. Bromann that you favored night operations, did he make any response to you?

A. Well, if I remember correctly, he said that—he must have made some response, naturally, but I cannot recollect verbatim the words that he said, except that it would be a hard thing to sell to the independent merchants, the one-store operators.

Q. Yes. He had told you that before, hadn't he?

A. Yes, sir.

Mr. Dunau: If your Honor please, we are again going outside the scope of the direct examination.

The Court: Sustained.

Mr. Christensen: That's all.

*Redirect Examination by Mr. Dunau.*

Q. Mr. Kokalis, you stated that you participated in the 1958 negotiations. Was the 1957 agreement a two-year agreement?

A. Yes, it was. But I think there was some meetings, anyway, that came up. I can't remember, because I 874 just have been too busy with other things, too, and I didn't devote all of my time to these meetings. I didn't go to all the meetings.

Q. But you do recollect that you participated in the 1957 meetings?

A. Definitely.

Q. And you participated in the negotiations which took place after 1957?

A. Yes, I did.

875 Q. And you participated in negotiations which took place before 1957?

A. I think I did. In '56 was my first participation.

Q. Now, you answered Mr. Christensen that you voted yes in a poll for night operations. Would you tell me when this took place?

A. '57, but I can't recall when, what night or what date.

Q. Do you mean, when you said you voted yes, that in a discussion amongst the employer group concerning whether to propose night operations, you favored that position?

A. That's right.

876 *Recross Examination by Mr. Christensen.*

Q. In the '57 negotiations, Mr. Kokalis, when you attended those sessions, I assume you did the speaking for your chain, for Sure Save?

A. Yes, I did.

Q. Now, who spoke for Sure Save when you were not present?

A. Mr. Bromann.

Q. Mr. Romann?

A. Yes, sir.

877 SAM POLLACK, a witness called on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Dunau.*

Q. Would you state your full name, please, sir?

A. Sam Pollock, P-o-l-l-o-c-k.

Q. Where do you live, Mr. Pollock?

A. In Akron, Ohio.

Q. Is your present position president of District Union 427, Amalgamated Meat Cutters and Butcher Workmen of North America?

A. It is.

Mr. Christensen: District Union, you call it?

Mr. Dunau: District Union; that's right.

878 By Mr. Dunau:

Q. Is it also known as Local Union 427?

A. Yes.

Q. Why is it called District Union 427?

A. Because we cover more than one locality. Our jurisdiction extends over a number of counties in Northeastern Ohio.

Q. Have you held the position of president of District Union 427 since 1952?

A. Yes.

Q. What was your position before 1952?

A. I was international representative for the Amalgamated Meat Cutters and Butcher Workmen of North America.

Q. For what period of time did you occupy that position?

A. Approximately fourteen years.

Q. Between what years?

A. Between 1941 and 19—

Q. 1952?

A. Well, I was international representative from 1938 to 1952, but there was a period of two years when I 879 took a leave of absence from the international to accept a Local Union position with the Akron Local in Akron, which subsequently merged with Cleveland, and then we became a District Union.

Q. Now, during your two year period when you were business representative of the Akron Local, was that during the years 1939 to 1941?

A. Yes.

Q. Does District Union 427 engage in collective bargaining with a group known as Cleveland Food Industry Committee?

A. Yes.

Q. Would you state what employers compose Cleveland Food Industry Committee?

A. Fisher Foods, Pick and Pay, Kroger Company, Stop and Shop, Buy Right, Heineman's, Cleveland Food Dealers Association, representing the Independents.

Q. Cleveland Food Dealers Association represents the Independents?

A. That's right.

Q. And the others are the chain store operations?

A. Yes. Either local, regional, or national chain  
880 operations.

Q. But that is more than one store?

A. Right.

Q. What geographical area is covered by the Cleveland Food Industry Committee?

A. Cuyahoga County.

Q. Would you spell that, please?

A. C-u-y-a-h-o-g-a.

(Continuing)—Lorain.

Q. L-o-r-a-i-n?

A. That is right.

Lake, Ashtabula,

Q. A-s-h-t-a-b-u-l-a?

A. Yes. And Medina County.

Q. Medina?

A. Right.

Q. Now, how about another county called—I can't spell  
it.

A. G-e-a-u-g-a.

Q. Now, are those the counties which are covered by the  
group known as Cleveland Food Industry Committee?

881 A. It is.

Q. Well, state the cities which are located within  
Cuyahoga County.

A. Well, Cleveland, Ohio. There is east Cleveland,  
Parma, Shaker Heights. Approximately, as I recall, six  
or seven which have city status under, you know, accord-  
ing to Ohio law, and approximately fifteen to twenty other  
communities located in Cuyahoga County.

Q. What is the approximate population of Cuyahoga  
County?

A. Well, approximately one and one-half million.

Q. Now, does District Union 427 bargain on behalf of

Meat Cutters in the meat departments located within the geographical area covered by the Cleveland Food Industry Committee?

A. Yes.

Q. Does Retail Store Employees' Union Local 880 engage in collective bargaining with the Cleveland Food Industry Committee?

A. Yes.

Q. Does Local 880 bargain on behalf of all store employees except the meat department employees and 882 supervisors?

A. Yes.

Q. Would you tell us how the collective bargaining between District Union 427 and the Cleveland Food Industry Committee is conducted?

Mr. Christensen: I am going to object. I haven't at this point. I don't see the materiality of this.

The Court: Yes, what is the relevance of this?

885 The Court: He may answer.

By Mr. Dunau:

Q. The question was, Mr. Pollock: How was the collective bargaining by the District Union 427 and the Cleveland Food Industry Committee conducted?

A. Membership select a committee representative of the various companies with which they deal. The employers select a committee from among themselves, representing the various operators, as I mentioned previously, and then we meet for the purpose of negotiating a stand- 886 ard industry agreement which will apply generally throughout the jurisdiction that we cover in our negotiations with these employers.

Q. Is the collective bargaining between Local 880 and the Cleveland Food Industry Committee conducted in the same way?



A. Precisely.

Mr. Christensen: Well, now, just a minute. I am going to object unless he is present. Let's forget the grocers for a minute. This man is a meat man.

By Mr. Dunau:

Q. Are you familiar with the way Local 880 conducts its bargaining?

A. Yes.

Q. Are you sometimes present?

A. Yes.

Mr. Dunau: May he answer the question?

The Court: He may.

By Mr. Dunau:

Q. Is the collective bargaining between Local 880 and Cleveland Food Industry Committee conducted in the same way as collective bargaining between District Union 427 and Cleveland Food Industry Committee?

A. Precisely.

Q. Are the market operating hours of the meat departments in Cuyahoga County determined by the collective bargaining agreement between District Union 427 and Cleveland Food Industry Committee?

A. It is.

Mr. Christensen: May I have a standing objection to the materiality and relevance of this?

The Court: You may.

888 By Mr. Dunau:

Q. What are the hours of the meat department—the meat department operating hours in accordance with the collective bargaining agreement?

A. Well, the collective bargaining agreement provides that the operating hours, the working hours, shall be between nine and six, Monday, Tuesday, Wednesday and

Thursday; eight to six Friday and Saturday; closed all day Sunday.

890 Q. Mr. Pollock, I show you what has been marked Defendant Union's Exhibit 23, entitled "A contract between Retail Store Employers, Union Local 880, and the Cleveland Food Industry Committee" for the period September 4, 1961 to September 1, 1963, and ask you whether that is the copy of your current agreement?

A. It is.

Q. I show you what has been marked as Defendant Union's Exhibit 22, entitled "An Agreement between Local Union 427; Amalgamated Meat Cutters and Butchers of North America and the Cleveland Food Industry Committee," from September 4, 1961 to September 1, 1963, 891 and ask you whether that is a copy of your current agreement?

A. It is.

892 *Cross-Examination by Mr. Christensen.*

Q. Mr. Witness, as to Exhibit 23, the Retail Stores Employees' Union, that is not with your Union, is it?

A. Retail Stores Local 880 is Retail Clerks. That is not our Union.

Q. And you never signed this contract nor negotiated it, did you?

A. I did not sign the agreement. I have sat in at various times of the past several years during negotiations and assisted in negotiations for Local 880. They, in turn, sat in on our meetings and assisted Local 427.

893 Q. You did not participate in the negotiations that led to this contract, this past August, did you?

A. If you mean by "participation," did I sit in on any of the negotiations—

Q. Yes?

A. My answer is yes, I did. If you are talking about the—

Q. Just a minute.

A. I did not execute the contracts.

Q. Just a minute.

What date did you sit in on the negotiation when those negotiations leading to this September 4th contract took place?

894 A. Oh, I imagine during the most of July and August, possibly.

Q. Where did they take place?

A. In Cleveland, Ohio.

Q. Whereabouts?

A. Well, several places. They would take place at the Fisher Foods office sometimes. They took place at the Statler Hotel sometimes, and I think on one or two occasions at the Carter Hotel.

There might have been some—there probably were about twenty sessions, and I may have sat in on one or two of them.

Q. Which one did you sit in on?

A. Oh, I wouldn't recall just precisely the date.

Q. Where, where?

A. My recollection is the Carter Hotel.

Q. You were at the Carter Hotel?

A. I think that was one of the sessions I sat in on.

Q. You think? You have no real recollection of it, have you?

A. I have a good recollection that I sat in on a 895 meeting.

Q. All right. Now, if you have a good recollection that you sat in on a meeting of the Grocery Clerks' Union, with the Cleveland Food Industry, where does that good recollection tell you that meeting took place?

A. My best recollection is that it took place at the Carter Hotel.

Q. And when?

A. Sometime during the month of August.

Q. 1961?

A. That is right.

Q. That is something over a year ago?

A. Yes.

Q. And what was discussed that day?

A. I think the application of available hours and health and welfare.

Q. Health and welfare?

A. Yes.

Q. Who spoke on the subject of application of available hours?

A. Well, I probably did, because I clarified its 896 application of how it would operate.

Q. Mr. Witness, please don't say probably. If you don't recall, say so.

A. Well, I spoke on health and welfare, specifically. I think I spoke on the available hours clause.

Q. But you are unwilling to make your oath to it? You just say you think so?

Q. You are unwilling to make your oath that you talked on anything other than health and welfare, are you not?

A. Mr. Christensen, I spoke on many issues during these negotiations.

Q. Mr. Witness, please.

A. And during the—

Q. Please, please.

897 The Court: Listen to the lawyer.

By Mr. Christensen:

Q. You just have a single question, and if I want a speech, I will ask for it.

Now, are you willing to say that on this day in August you talked in the meeting of this particular group leading to this particular contract, you spoke about anything other than health and welfare?

A. To my best recollection I spoke on health and welfare and availability, available hours clause.

Q. All right. Now, who did you speak to?

A. To those that were present.

Q. Who was there?

A. To my best recollection a sub-committee of the Cleveland Food Committee, consisting of Mr. English of Fisher Foods and I think a Mr. Bedell Smith—Mr. Bill Bedell, I'm sorry, myself, Mr. Dunlap—I don't recall who else was there from his organization.

This is, to my best recollection, among the people that were there. At least they were present.

898 Q. That year who concluded their agreement first, you or the—by "you," I mean the Amalgamated, or the Retail Store employees, Retail Clerks?

A. I think we concluded our agreement first. I would not—I'm not altogether positive about it, but I think we concluded first.

Q. Had you concluded your agreement by the time this meeting was held in August?

A. Substantially, I think we had concluded. We may have had an area or two that we had to finalize, and did not yet finalize at the time this meeting was held.

So far as the Meat Cutters, I think we were pretty much in substantial agreement at that time, with possibly some fine points yet to be ironed out.

Q. You were a visitor at this meeting, were you not?

A. We generally characterized it as "observer."

Q. As an observer?

A. That's right.

Mr. Christensen: Well, I have no objection to the 899 documents.

The Court: They are received.

(Said documents, so offered and received in evidence, were marked DEFENDANT UNION'S EXHIBITS 22 and 23.)

900 *Further Direct Examination by Mr. Dunau.*

Q. Mr. Pollock, will you state the store operating hours which are observed outside Cuyahoga County?

A. In Lorain, Lake and Ashtabula County, the hours are 9 to 6, Monday, Tuesday, Wednesday and Thursday; 8 to 9 on Friday; and 8 to 6 on Saturday.

In Medina County they are 9 to 6 Monday, Tuesday and Wednesday, 8 to 6 Thursday and Friday and 8 to 6 on Saturday.

I am sorry, 9 to—no, 8 to 6 Thursday and Friday and 8 to 6 on Saturday. I will correct myself.

Mr. Christensen: It doesn't make sense.

The Witness: No, 8 to 9 Thursday and Friday and 8 to 6 on Saturday.

By Mr. Dunau:

Q. Now, outside the meat departments, are the store operating hours in Cuyahoga County determined by the collective bargaining agreement between Local 880 and the Cleveland Food Industry Committee, disregarding the meat department and considering the rest of the store? Are the store operating hours in Cuyahoga County determined by the collective bargaining agreement between local 901 880—

Mr. Christensen: This is outside of Cuyahoga County?



Mr. Dunau: No, disregarding the meat department, the rest of the store within Cuyahoga County.

By Mr. Dunau:

Q. Are the store hours determined by the collective bargaining committee between the Union and the—well, what are the hours?

A. In Cuyahoga County they are 9 to 6 Monday, Tuesday, Wednesday and Thursday, 8 to 6 on Friday, and Saturday.

Q. Now, does the collective bargaining agreement between Local 880 and the Cleveland Food Industry Committee also govern store operating hours outside of Cuyahoga County?

A. Yes.

Q. And are the stores outside Cuyahoga County the same hours you have just described with respect to Local 427?

902 A. Precisely.

Q. For how long has this condition of store operating hours existed in the geographical area covered by the Cleveland Food Industry Committee?

A. Well, with the Cleveland Food Industry Committee—they came into existence possibly 1945-46. At that time, as the Food Industry.

Prior to this it was with the same people in the Food Industry, but not in the Food Industry negotiations.

Q. Let me ask you this: Have the store operating hours which you have described, have they existed in precisely the same way as they now exist since 1952?

A. Since '52, yes.

Q. What was the situation before 1952?

A. The store hours prior to 1952 were 9 to 6 Monday, Tuesday and Thursday, 9 to 1 on Wednesday, 8 to 6 Friday and Saturday.

Q. You are now describing the hours in Cuyahoga County?

A. Yes.

903 Q. Outside of Cuyahoga County were the hours before 1952 approximately what you have answered with respect to the current situation?

A. Yes, except that they also observed 9 to 1 on Wednesday, but they had 8 to 9 on Friday.

Q. I see.

A. With the exception of the one county which had 8 to 9 two nights.

Q. Which counties was that, sir?

A. Medina.

Q. Now, in the geographical area which is presently covered by the Cleveland Food Industry Committee, do the meat departments operate on both a service and a self-service basis?

A. They do.

Q. Would you tell us which is the more prevailing method of operation?

A. Well, the prevailing method is the self-service operation.

Q. How many Meat Cutters are covered by the collective bargaining agreement between District Union 427 and the Cleveland Food Industry Committee?

904 A. Approximately thirty-two hundred.

Q. Within the geographical area that the Cleveland Food Industry Committee covers, are all butchers who work for employers represented by District Union 427?

A. Yes.

Mr. Christensen: Would you read that question and answer, please?

(Question and answer read.)

Mr. Christensen: Work for—

Mr. Dunau: Work for employers.

Mr. Christensen: All employers?

Mr. Dunau: Yes, sir, all employers.

By Mr. Dunau:

Q. That is correct, is it not?

A. Yes.

Q. Now, within the geographical area of the Cleveland Food Industry Committee, are all store employees except those in the meat department and supervisors represented by Local 880?

Mr. Christensen: I am going to object to this. This goes so far—he cannot possibly know every corner grocery, can he?

905 He cannot claim—

Mr. Dunau: I withdraw the question.

By Mr. Dunau:

Q. Are there a number of stores within the same area, within the area which is covered by District Union 427, in which the grocery clerks are not organized by a Union?

A. Yes.

Q. And is the situation in those stores that the meat department is represented by District Union 427, and the grocery clerks are unrepresented?

A. Yes.

Q. About how many such stores are there?

A. To the best of my knowledge at the present time, some six in Cuyahoga County.

906 Q. What, in those stores in which your grocery clerks are not represented by a Union, what is done with respect to meat sales in the meat department after 6:00 P.M.?

A. The total operation closes down and they observe the standard industry conditions of 9:00 to 6:00, the six days that I mentioned, and closed all day on Sunday.

Q. When you say "the total operation," you mean the total operation in the meat department?

A. Meat department, yes.

Q. Is there a sign posted in those stores concerning the closing at 6:00 P.M.?

A. Yes.

Q. What is that?

A. Well, the sign that is posted says that by agreement with the meat cutters' District Union 427, the following hours of operation are to be observed, and customers are requested to do their shopping accordingly.

I am not quoting it exactly. I don't know just what the sequence is. And the hours, 9:00 to 6:00, are specifically stated.

Q. Are the meat counters covered with paper at 6:00 P.M. in those stores?

A. Yes. They pull the lights and cover the cases. Sometimes they cover them with cloth, most often with the brown wrapping paper.

Q. Now, does the Great Atlantic & Pacific Tea Company operate in the same geographical area which is covered by the Cleveland Food Industry Committee?

A. Yes, yes.

Q. Does District Union 47 represent the meat cutters of A&P in this area?

A. Yes.

Q. Does Local 880 represent the grocery clerks of A&P in this area?

A. Yes.

Q. Describe how the collective bargaining agreement with A&P is conducted?

Mr. Christensen: Your Honor, if it please the Court, you have ruled that he may show general conditions, but to get into collective bargaining between a specific employer and—

The Court: How important is that?

Mr. Dunau: Just to fill out with the one employer, A&P who was not embraced in the remaining group.

The Court: All right, shorten it up.

By Mr. Dunau:

Q. Describe how the bargaining committee with A&P is, sir?

A. The union selects a committee to represent the employees, and the employees, through their representatives, meet with us and negotiate a contract.

Q. To the collective bargaining agreement with A&P?

A. They do.

Q. Are the same operating hours observed by the A&P as observed by the Cleveland Food Industry Committee?

A. They are.

Q. How many meat cutters does A&P employ in 909 the area covered by the Cleveland Food Industry Committee?

A. Approximately between 450 and 500.

Q. What is the reason that Local 47 and Local 880—  
Mr. Dunau: No, strike that.

By Mr. Dunau:

Q. What is the reason that Local 47 includes, in the collective bargaining agreement, limitations upon store-operating hours?

Mr. Christensen: I will object to that as endeavoring to contradict the terms of a written instrument.

Mr. Dunau: In what way?

Mr. Christensen: There is no provision in here restricting store-operating hours.

915 Mr. Dunau: If your Honor please, I have had marked as Defendant Union's Exhibit 24 for identification a charge of the Court in *Spilka vs. Retail Store Employees Union Local 880 and Amalgamated Meat Cutters and Workmen of North America, Local Union 427.*

The particular parts of that charge which are relevant

to this proceeding appear at the Pages 36 to 37, 49 and 57 to 58.

At 36 to 37, the charge is:

"You are further instructed that the subject matter involved, namely the accord between an employer and the Unions as to working conditions, hours of work and store closing hours, that is consummation of a collective bargaining agreement, is a lawful subject matter upon which competent persons may contract one with the other."

At page 49, the charge reads:

"You are instructed, as a matter of law, that the right of a Union to picket or strike and protest against a violation of store hours or in support of a demand that an employer comply therewith or to secure a contract with an employer to abide by certain closing hours prevalent in an industry, is a lawful objective recognized in the law, which is circumscribed only by the requirement that the picketing be peaceful."

At pages 57 to 58:

"I instruct you as a matter of law that a Collective Bargaining Agreement represents an accord or understanding between an employer or group of employers and a Union which is legally enforceable, and that the inclusion of such an agreement of provisions which permit night operations and hours of employment after 6 o'clock P. M., in counties outside of Cuyahoga County, while by agreement placing limitations or prohibitions on night operations in Cuyahoga County for the same employers, is not prohibited by law and a strike against a Cleveland employer to obtain an agreement in conformity with Cuyahoga County hours of operation is a lawful objective for which the strike may be maintained."



920 The Court: I think that is a reasonable compromise. It will not be received in evidence. However, the excerpts you read is a part of the record.

921 THOMAS F. GORMAN, called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Dunau.*

Q. Will you state your full name, sir?

A. Thomas F. Gorman.

Q. Is that G-o-r-m-a-n?

A. It is.

Q. What is your address, please?

A. 7816 South Phillips.

Q. What is your present position with Local Union 546?

A. President of Local 546.

Q. In what year did you first begin working as a meat cutter?

A. August of 1910.

Q. How old were you at that time?

A. I was 19.

Q. How old are you now, sir?

A. The Lord willing, I will be 71 two weeks from today.

922 Q. Now, in 1910, when you first began working as a meat cutter, did you begin as an apprentice?

A. Yes, I did.

Q. For whom did you work at that time?

A. My mother.

Q. Did your mother operate a meat department?

A. She had a grocery and a meat—she bought the meat market next door. I worked in the market next to the grocery.

Q. Did your mother employ other butchers?

A. Yes, she did.

Q. About how many others?

A. Well, always one with me.

Q. That would be two with you?

A. Two.

Q. Two together, that is, counting you?

A. Yes.

Q. Now, how long did you continue to work in that store for your mother?

A. I worked there from 1910 to 1921.

Q. And what happened after 1921?

A. We sold the business there and then opened an exclusive meat market at 6853 South Wentworth.

Mr. Christensen: 68—

The Witness: 53.

By Mr. Dunau:

Q. South Wentworth?

A. That's it.

Q. And how long did you stay at that store?

A. Well, we stayed at that address six years, and we moved to a more advantageous point across the street, to 6909 Wentworth, and we were there to 1933.

Q. And what happened in 1933?

A. Victim of the depression.

Q. What did you say, sir?

A. We were a victim of the depression.

Q. What happened as a result of being victimized by the depression?

A. Well, we moved the fixtures out of there to this building that my mother had at 5013 South Halsted, and set it up as a market and rented it out as such.

Q. What did you do?

A. I went to work at National Tea.

Q. As what?

924 A. Market manager.

Q. Meat market, sir?

A. Meat market manager.

Q. How long did you work for National?

A. Two years.

Q. Then what happened?

A. I went to manage a market at 227 East 79th Street, known as a packing house market.

Q. How long did you work at that?

A. Till 1940.

Q. And what happened in 1940, sir?

A. I went to work for Jewel Tea, then.

Q. And how long did you work for Jewel Tea?

A. Four weeks.

Q. In what capacity?

A. As a journeyman meat cutter.

Q. And at the end of the four weeks what happened?

A. I went into the office of Local 546.

Q. At what job?

A. Special investigator.

Q. And what was the work of the special investigator?

A. That special investigator was to check up on 925 shops to see if the men were observing the hours, getting the proper pay. I visited the sick, and anything I was called upon to do.

Q. And how long did you work as a special investigator?

A. Until March of 1941. And one of our business representatives, Mr. Harry Berger, was stricken with a fatal illness, and I was put out in his territory.

Q. Doing what?

A. Well, my title was still special investigator, but I was doing the work of a business representative.

Q. And how long did that continue?

A. It continued—after a short period of time I was recognized as a business representative, and I was out on a different section of Chicago, Northwest side and South side and in 1951, I became president of the Local.

Q. And you have been president since 1951?

A. I have.

Q. Now, in 1910, when you first started working as an apprentice meat cutter, will you tell us what the store 926 operating-hours of meat departments were in Chicago?

A. From 7 A. M., to 7 P. M., Monday through Friday, and 7 A. M., to 9 P. M., on Saturday, and 7 A. M. to 1 P. M., on Sunday.

927 Q. Now, on Saturday, was it 7:00 A. M. to 9:00 P. M., or 7:00 A. M. to 10:00 P. M.?

A. I want to stand corrected. 7:00 A. M. to 10:00 P. M. is correct.

Q. On Saturday?

A. On Saturday.

Q. And did the butchers work throughout the full hours of the store operation?

A. Oh, yes.

Q. In other words, a butcher would work from 7:00 to 7:00 Monday through Friday, 7:00 to 10:00 on Saturday, and 7:00 to 1:00 on Sunday?

A. That is correct.

Q. How long did these hours continue?

A. They continued until November of 1919.

Q. Now, in what year was Local 546 formed?

A. In 1914.

Q. And what was its territorial jurisdiction?

A. Well, just that it was formed—we of the South Side recognized it as a South Side local, but it kept expanding until it took in its present territory. In fact, 928 at that time it took in suburbs on the west, that we no longer represent.

Q. Was it at least as large then as its present territorial jurisdiction?

A. Yes, about the same.

Q. Did Local 546 call a strike of the meat cutters in Chicago on November 1, 1919?

A. That's right.

Q. Now, when the strike was called on November 1, 1919, did you and your mother receive a visit at your store from officials of Local 546?

A. Yes. Two men.

Q. Who were they?

A. A business representative named Charles Rutter and a gentleman whom I met for the first time, known as Michael Kelly.

Q. How do you spell the Rutter, sir?

A. It is spelled R-u-t-t-e-r.

Q. Is Michael Kelly the father of the present defendant, Emmett Kelly?

A. He is; he was.

929 Q. What conversation took place at the store between your mother and Mr. Kelly?

930 A. Yes. Mr. Rutter and Mr. Kelly came into our store. At that time it was a combination store. We had moved the market into the grocery, and knowing  
931 Mr. Rutter, my mother said—

—my mother said, "What is wrong, Charlie?"

He said, "Well, we want more money and less hours."

And she said, "I am in perfect agreement with that."

And at that time Mr. Kelly—he had introduced Mr. Mike Kelly. Mr. Kelly walked out to the car and came back in with what we referred to as a shop card.

And he said, "You are entitled to this. Display it in the window. I know you will be proud of it."

Q. Was that a Union shop card?

A. It was.

And Mr.—

Q. Did Mr. Kelly state what hours they wanted?

A. Yes, he stated they wanted to cut off an hour 932 in the morning and an hour at night, and no Sunday hours.

Q. What were the hours he was seeking?

A. 8:00 A. M. to 6:00 P. M., Monday through Friday, and 8:00 to 9:00 P. M. on Saturday. No Sunday hours.

Q. Now, how long did the strike last in 1919?

A. Approximately eight days.

Q. Now, after the conclusion of the strike, what were the market-operating hours in Chicago?

A. 8:00 A. M. to 6:00 P. M., Monday through Friday. 8:00 A. M. to 9:00 P. M. on Saturday.

Q. Did those marketing hours continue until 1937?

A. Till 1937.

Q. Except for the strike in 1919, has Local 546, or any of the other defendant local Unions, conducted a strike in Chicago?

A. That is the first and only strike we have had.

933 *Cross-Examination by Mr. Christensen.*

Q. Mr. Gorman, in the last ten years—that will take us back to '52—apart from the strike vote that was taken in favor of a strike against Jewel and National Tea in 1957, has this Union ever taken a strike vote?

A. I don't remember any other strike vote at any time.

Q. At any time?

A. At any time.

Q. And the only time you—

A. That I have sat in negotiations. You are referring to the ten years prior to this?



A. Yes, I am not going to try and go way back. You can go back further if you want to.

You have been president since 1951?

A. That's right.

Q. And during your entire tenure the only employers against whom a strike vote was sought, was the one against Jewel and National Tea in 1957; isn't that correct?

A. That's right.

936 THEODORE J. MEINDL, a witness called on behalf of defendant Union, having been first duly sworn, deposeth and saith as follows:

*Direct Examination by Mr. Dunau.*

Q. Would you state your full name, please?

A. Theodore J. Meindl.

Q. Where do you live, sir?

A. 524 Maple Avenue, Wilmette.

Q. Is that here in—

Q. In Wilmette.

Q. Mr. Meindl, in 1957 did you operate a chain of stores in Chicago known as the Del Farm Stores?

A. Yes, I did.

Q. What was your position with Del Farms?

A. President.

Q. How many stores did you operate in 1957?

937 A. I believe—let's see. Twelve. There were eleven in service and—no, eleven self-service and one service.

Q. The eleven self-service, you mean the eleven self-service meat departments, and one service meat department?

A. That's correct.

Q. Did you sell these stores?

A. Yes, I did.

Q. To who?

A. To National Tea.

Q. When?

A. In February and March of 1958.

Q. Now, how long had you operated Del Farm before you sold it?

A. About twelve or thirteen years.

Q. At the time that you sold your Del Farm stores, what was the approximate dollar volume of the meats that you sold in the stores?

A. About six and a half million dollars.

Q. Now, before you began operating the Del Farm stores, what did you do, sir?

938 A. Well, I was with A&P, superintendent at the time of around three hundred stores.

Mr. Christensen: Keep your voice up a little.

By the Witness:

A. Superintendent of A&P at the time. Around three hundred stores. Meat operations.

By Mr. Dunau:

Q. You supervised or were a meat superintendent of three hundred A&P stores?

A. Yes.

Q. Were you in charge of meat operations, did you say?

A. Meat operations.

Q. Were those three hundred A&P stores in the Chicago area?

A. In Metropolitan and suburbs, as far as Streator, Illinois. On one extreme we went down as far as Streator, Illinois, and as far east as Goshen, Indiana.

Mr. Christensen: Could I inquire how far north?

939 The Witness: Wisconsin. The boundary line of Wisconsin.

By Mr. Dunau:

Q. Was most of the meat which was purchased for sale in these three hundred stores purchased through your department, sir?

A. Yes.

Q. Now, when you operated the Del Farm stores, did you contract with the defendant local Unions in this case covering the employment of butchers in these stores?

A. Yes, I did.

Q. Were the market-operating hours of your meat departments in the Del Farm stores determined by the collective bargaining agreement?

A. Yes, they were.

Q. Were you a member of Associated Food Retailers?

A. No, sir.

Q. When did A&P begin operating meat departments in the Chicago area?

A. Well, we had stores in the suburbs of Chicago 940 prior to 1938. Around '37-38, that we entered into Chicago and negotiated—I originally negotiated the contract when we entered into Chicago with Jim Lavery.

Q. Who is Jim Lavery?

A. Head of the local, 546.

Q. You then entered into the agreement on behalf of A&P with Jim Lavery?

A. At that time.

941 By Mr. Dunau:

Q. And did that agreement cover market operating hours of the stores in Chicago?

A. Yes, it did.

Q. Sir, based on your experience, please state whether in your opinion fresh beef, veal, lamb, mutton, and pork can be sold in a self-service meat department between the hours of 6 p. m., and 9 p. m., without employees on duty in the meat department?

A. My own opinion, no.

Q. Would you state why not?

A. Well, in the past several years, since I have sold out my business, I have made observations on night operations, meat operations, and these observations have been made across the country all the way from California to Florida and I have found my operations without employees has been unsatisfactory.

Q. What was—

A. And I will give you that—I will try to give you the reasons. One, because of packaging control in the store, customer packaging control. What do I mean by that?

942 If you ever watched a customer walk into a meat department and pick up a package, she looks at it, she looks at the price, she is looking for bone, fat content, and she decides not to buy the package. She will place that package not where it was before, probably some other part of the counter.

Now, secondly, many customers, and a number of customers come in, when they handle a package in that manner, they would tear the cellophane to that package. In tearing the cellophane to that package, when she is through with it and does not buy it, she places it in the counter. That package then becomes unsalable.

What do we have to do with the package? The package then should be rewrapped, sent back to the processing men, rewrapped and placed back in the counter.

Now, you can see, gentlemen, if you had fifteen or twenty customers in that department handling packages in that manner, what an untidy condition you would have in these departments.

943 This has been one of my main objections to employing and operating self-service departments without employees.

I have another objection. This is my own personal ob-

jection. Many people experienced in the field in this business, experienced in this field as I am, we quite agree on this point.

Mr. Christensen: May I ask the witness to tell what he believes, not what he thinks other people believe.

The Court: Yes, your own opinion.

The Witness: This is my own opinion of it.

Mr. Christensen: And ask that be stricken.

The Court: Yes, the "we" may be stricken. You want your own opinion.

Mr. Dunau: Just stick to what you say you know.

The Court: Not the opinion of others.

The Witness: Well, secondly, there is another angle on this night operations which I objected to as unsound  
944 business. It was the varieties of cuts that the manager, meat market manager, is allowed to put into the department.

By varieties of cuts, I mean this, they will display during these dull business hours, days—that would be usually Monday, Tuesday, and Wednesday—

By Mr. Dunau:

Q. You say these are dull days?

A. These are dull business days. They will probably place one cut, for instance, a rump roast at three pounds in the counter, but they will not have a four-pound cut or a five-pound cut or a six-pound cut or a two-pound cut.

Now, a lady comes up to this counter, and she wants a five-pound rump roast, and all you have got in the counter is a three-pound cut.

Now, who is going to help this lady? Here she is. She wants a five-pound cut, and all we are telling her is that all we are going to give you and sell you is a three-pound cut. If you don't want a three-pound cut, why, you will just have to shop elsewhere.

945 Now I have seen this happen many times in the stores.

I have also seen the slow nights, business nights, where they don't allow legs of lamb, veal roasts, maybe pork roasts—they will have pork chops, but they won't have pork roasts.

A customer comes in and wants a pork roast. If you don't have it displayed, there is reason for not displaying it, because of shrinkage and waste, we usually have it in a cooler.

Now, if a man is on duty, he would be able to supply that customer with a particular roast which you don't have on display.

Now are we giving customer satisfaction? I don't see in my opinion—this is my personal opinion—that you can satisfy your customer without an employee on the job.

946 Q. Now, sir, in your experience have you found that some customers are unfamiliar with the uses of particular meats and required assistance of a butcher in telling him what is desirable for particular meals?

A. Well, yes, I guess we do find cases like that. The younger set, just getting married, know very little about cooking and they would like to have someone guide them a little bit, tell them "This is a nice pot roast, cook it so long."

This is where the man on duty can really help that lady perform her job at home.

Q. Now, in your observations of meat departments, where an employee is not on duty at all, have those nights been confined to Monday, Tuesday and Wednesday?

A. Well, I think in my observations they have been confined to those nights.

Q. On Thursday and Friday, have you found that at least a skeleton crew is always on duty?



A. Yes, I have found the skeleton crew on Thursday, 947 day, and I have found in my observations on Friday, stores operating a skeleton crew, and I find, too, that operations that do good business with a skeleton crew are very unsatisfactory.

Q. Are you saying, sir, that—

A. What I mean to say is when they operate on a business night, like Friday night usually is a busy night, operating with a skeleton crew I found that to be unsatisfactory, and if you would like me to explain why, I will be glad to do it.

948 Q. Would you please explain, sir?

A. I found operations on Friday night with a skeleton crew—and I have had some personal experience with this myself—that the meat that has been processed in the daytime, prepared for Friday night, is usually sold out, and not having a full complement Friday night to prepare and process meats for Saturday morning's opening, this has been the reason for it.

I have seen stores Saturday morning without meat in their counters, fresh meats, up as late as eleven o'clock. There is very little meat in their counters, where they should have been jammed up and fully processed, because the working job hasn't been done the day before.

949 Q. Mr. Meindl, on a meat department operation in a self-service department, do you have a problem of replenishing meat that is being sold during the hours between six and nine?

A. Well, there is a job without anyone on there. They should be replenished.

Q. Has it been your observation that a variety of meat has been sold out and there is nothing to replace that?

A. Yes, I thought I explained that to you before.

Usually you don't have cuts, and no one on the job, and the lady is looking for a certain cut and there isn't a cut there to be had, and there is no one there to service her.

Q. Thank you, sir.

A. The cuts could be in the icebox, in the cooler, refrigerator, but they are not in the case.

950 *Cross-Examination by Mr. Christensen.*

Q. Mr. Meindl, by whom, if anyone, are you employed now?

A. By whom?

Q. Yes.

A. I am employed by, right now, in a supervisory capacity at National Tea.

Q. National Tea?

A. That's right.

Q. Is that steady employment?

A. Well, no, there is some temporarily. I have been on a consultant basis for other companies on a temporary basis.

Q. Do you draw annual compensation from National Tea now?

A. Annual compensation? I have drawn about  
951 three weeks' compensation.

Q. Do you have any contract with them by which they agree to employ you as a consultant?

A. No.

952 Q. And when did you draw this three weeks' compensation from National Tea?

A. In the last few weeks.

Q. In the last few weeks?

A. That's right.

Q. And you say you have been employed as a consultant by others?

A: That's right.

Q: What others, please?

A: Is that necessary?

Q: Please?

A: Well, Benner Tea Company.

Q: Benner?

A: Yes, sir.

Q: Where do they operate?

A: Burlington, Iowa.

Q: How long did you work for them?

A: Four months without a contract.

Q: And were you giving them advice as to operating a meat department?

A: Yes, sir, and groceries, and produce.

953 Q: Groceries and produce?

A: Yes, sir.

Q: How many meat stores do they operate?

A: I think there is thirty-three.

Q: How many?

A: Thirty-three.

Q: Who else have you worked for as a consultant?

A: Well, I was sent over by a group to Germany to consult on buying a chain along the Rhine River called the Ottman Stores.

Mr. Dunau: Spell that for the reporter, please.

The Witness: O-t-t-m-a-n.

By Mr. Christensen:

Q: In this country who else have you been employed by as a consultant?

A: Since I left my job at National Tea, 1958? I went over to set up buying departments in California for six months.

Q: Buying departments for National Tea?

A: Buying departments on produce.

Q. On produce?

954 A. Yes.

Q. So that as I understand it, you operated the Del Farm food stores from—well, when did you start operating Del Farm foods?

A. 1945.

Q. 1945, about?

A. Yes.

Q. And you operated that until February or March of 1958?

A. Just about. Right.

Q. You did not own that organization, did you? That was a corporation—

A. That's right.

Q. (Continuing.) —that had several other stockholders?

A. That's right.

Q. And that was—either stock or the stores were sold to National Tea shortly after the turn of the year, 1958?

A. That's right.

Q. From that time on you have only operated as a consultant in meat operations, as you have told us?

955 A. That's right.

Q. So that you went out and arranged a buying operation for National Tea on produce somewhere out on the Pacific Coast in 1958, or thereabouts?

A. Well, later on in the year.

Q. Then you worked for this outfit out here in Iowa for three or four months?

A. Yes.

Q. And you say you have done two or three weeks' work recently for National Tea?

A. That's right.

Q. Was that in connection with meat operations or other operations?

A. General operations.

Q. General operations?

Specifically, what was the nature of it?

A. General food operations.

Q. Not meat operations?

A. Meat was included.

Q. Well, what did you advise them with respect to meat within the last few weeks?

957 A. The National Tea bought over a chain of stores in Pittsburgh and Youngstown.

By Mr. Christensen:

Q. You will have to speak louder.

A. They bought a chain of stores called the Loblaw in Pittsburgh and Youngstown. I was sent down there to make my observations in all departments, meats, groceries and produce departments, and give them my opinion  
958 of what should be done, what could be done, to help those stores.

Q. How many stores were there involved?

A. One hundred fifteen stores.

Q. What?

A. One hundred fifteen stores.

Q. One hundred fifteen stores?

A. Yes.

Q. You worked at that for two or three weeks?

A. About three weeks; yes, sir.

Q. And the nature of that work in part was to examine the operating statements of each of those one hundred fifteen stores to see what appeared to be profitable and which not, isn't that true?

A. No, not exactly. It was to observe the stores, and what conditions the stores were in, and what had to be done to improve the store conditions.

959 Q. Did you look at the operating statements of each one of those 115 stores?

A. I looked at most of them, but I didn't look at all of them.

Q. Did you know which were the most profitable and which were the losers?

A. Yes.

Q. Did you concentrate your attention upon those that appear to be the weakest stores?

A. Not necessarily.

Q. How many stores—

A. I didn't have time to do that, counselor.

Q. All right.

A. It was general information which they wanted from me.

Q. How many stores did you actually go into?

A. Well, I went into about 55 stores of the Loblaw group and about 65 of the competitors'.

Q. How old a man are you, Mr. Meindl?

A. 62.

Q. How many hours a day did you work in this two or three week exploration?

960 A. How many hours?

Q. A day, yes.

A. Well, I usually start about 9 o'clock in the morning. The stores are open at night, and I worked up until 9 o'clock that night. And you could count that almost every day.

Q. Did you come home to Chicago weekends?

A. No, sir.

Q. You stayed there, right straight through?

A. One week I came home.

Q. What?

A. One night I came home to Chicago.

Q. One night?

A. Yes, sir.

Q. Between 9 a.m., and 9 p.m., I assume you took off time for lunch and time for dinner?



A. Yes, sir.

Q. So that you probably worked eight, nine hours a day?

A. No, I would say it's more than that.

Q. More than that?

A. Yes. I had to get my information quickly.

961 Q. When you came home to Chicago during this thing, when did you come home, on a weekend?

A. Usually.

Q. Usually?

A. Yes. Saturday night I came home and—the stores are closed Sunday down there.

Q. You would come home, get an airplane late Saturday?

A. That's right.

Q. What line did you fly?

A. Well, it would be United Airlines.

Q. United Airline?

A. It could be Eastern.

Q. What did you say?

A. I think it was Eastern one time.

Q. Eastern one time?

A. Yes.

Q. One time you came home on United and one time you came home on Eastern?

A. I think so. I believe—some of these were arranged by the company, and they made all the arrangements where I didn't make these arrangements.

962 Q. How many of these trips did you make back and forth between Chicago and Pittsburgh? You made two—

A. In the past three weeks I made one trip home.

Q. What?

A. In the past three weeks I made one trip home, other than today.

Q. Other than today?

A. Than yesterday. I left yesterday at 12 o'clock.

Q. Wait a minute. Do I misunderstand you? I thought this task had been completed and that you were at it all told about three weeks, and it occurred some little time ago. Is this task still going on?

A. Yes, sir.

Q. So you have not yet been in the entire 120 stores, is that right?

A. No, sir.

963 By Mr. Christensen:

Q. That is not right?

A. I say I have not been in 120 stores. 115 stores.

Q. 115 stores?

Well, I understood you somewhere to say you had investigated 55 of the purchase stores and approximately 65 competitive stores; and you have done that in the past three weeks?

A. Just about.

Q. Pardon?

A. Just about that in the past three weeks, yes, sir.

Q. Do you have an office that you work in in Pittsburgh?

A. No. There is one in Youngstown. There is one in Pittsburgh. There is two Divisions.

Q. When you go to Pittsburgh to do this, where do you sit down to assemble your information and do your notes and complete your work?

A. I do that at night at the motel I stay at.

Q. At the motel you stay at?

A. I do that work.

Q. You do that after 9 o'clock?

964 A. Yes, sir.

Q. Now, when you did this work in Iowa for this Tea Company whose name slips me—

A. Benner Tea Company.

Q. When did that occur?

A. In '59.

Q. What time of the year?

A. February—February.

Q. Did you move out there or did you commute?

A. I stayed out there probably two weeks, the first two or three weeks. I believe I stayed there for three weeks without moving. Then I commuted.

Q. Did you visit stores or did you work in an office there and get reports and consider the setup?

A. Well, my job is to visit stores and make—form opinions on store conditions. That is usually my job.

Q. I don't care what your usual job is.

A. That's what I do.

Q. This particular time is all I am inquiring about, Mr. Meindl?

A. I visited all of the stores of the Benner Tea 965 Company as well as my competition during that period.

Q. Now, did they have self-service meat departments?

A. Yes, sir.

Q. Did they have night operations?

A. Yes, sir.

Q. Did—

A. Not every night.

Q. What?

A. Not every night.

Q. How many nights did they operate?

A. Well, I think it was Thursday and Friday they operated.

Q. Thursday and—

A. —Friday, as I remember it.

Q. This was 1959?

A. Yes, sir.

Q. You are the expert consulting with these people?

A. That's right.

Q. Did all of their stores operate Thursday and Friday night in the meat departments?

A. There may have been a few that didn't. There may have been a few. I think there was about three or 966 four that did not operate.

Q. Did not operate at night at all?

A. I am quite sure there was about three or four that did not operate at night.

Q. And then the others operated you think Thursday and Friday night?

A. That's right.

Q. Are they still operating Thursday and Friday night?

A. I don't know. I haven't been out there since.

Q. Did you recommend to them that they not operate Thursday and Friday night?

A. What are you referring to, the store or to a particular department?

Q. I am referring to the operation of this Benner Tea Company's meat departments on Thursday and Friday nights. Did you advise that company not to operate those meat departments on Thursday and Friday night?

A. No, I did not advise them.

Q. So now in this purchase of the Loblaw operation in Pittsburgh that you have worked on for two or three weeks, do any of those stores have meat departments?

A. Yes, sir.

967 Q. How many of them?

A. They all have them.

Q. They all have meat departments?

A. Yes.

Q. Are any of those service markets?

A. I think there is one in the group, one that is—

Q. And the others are—

A. (Continuing)—self-service.

Q. Self-service.

Do they operate any nights?

A. Yes, sir.

Q. How many nights?

A. Every night.

Q. Until what hour?

A. Nine o'clock. Nine o'clock.

Q. Nine o'clock.

And do the competitive chains in the Pittsburgh area offer night sale of meats, self-service?

A. Yes, sir.

Q. Have you observed the night sale of meats out on the Pacific Coast in connection with this survey you 968 made out there for National Tea in the produce business?

A. Yes, sir, I did, out in California.

Q. All right. And—

A. And Arizona, Phoenix.

Q. The night sale of meats—

A. Yes.

Q. (Continuing)—throughout the country is quite prevalent, is it not?

A. In certain areas it is.

Q. Well, they sell them in New York, don't they? They operate at night in New York, don't they?

A. Yes.

Q. Boston?

A. I haven't been to Boston.

Q. You don't know about Boston?

A. No.

Q. Detroit?

A. Detroit, yes.

Q. Minneapolis?

A. I am not familiar with Minneapolis.

Q. St. Louis?

969 A. Not familiar with St. Louis.

Q. Omaha?

A. No, I don't know.

Q. You don't know.

Memphis?

A. No, I don't know.

Q. You don't know about Memphis?

A. No.

Q. Atlanta, Georgia?

A. No, I don't know.

Q. Baltimore, Maryland?

A. Yes.

Q. Philadelphia?

A. Yes.

Q. All Upstate New York?

A. Yes.

Q. Have you advised National Tea to cut out its night operation of meat in the Pittsburgh area?

A. I didn't advise them one way or the other.

Q. Then you have not advised them to close down their night operations?

970 A. My advice was not along those lines.

Q. You haven't given them that advice, have you?

A. Not yet. I don't think it is the time to give them that advice.

Q. Now, you recognize, Mr. Meindl, that various operators hold different opinions as to proper ways to operate a market, isn't that correct?

A. That's correct.

Q. And I assume you do not maintain that you are the only skilled marketer of meats in the country?

A. No.

Q. Do you know whether or not Jewel Food Stores enjoys a greater ratio of meat sales in comparison with its total volume than National Tea enjoys in respect to its total volume?

A. Yes, I know that.



Q. And Jewel enjoys a greater ratio of meat sales, does it not?

A. I think so. I don't know. From what you say or someone else in your company would say, they claim they have got a certain percentage, and that's all I know.  
971 I do not know the exact figures of Jewel Tea's meats, whether they are greater, or not. I have heard it said that they enjoy a greater percentage of—

Q. That's been said in the trade journal, hasn't it?

A. That's right. But I can never verify it.

Q. And does that to you indicate that Jewel knows pretty well how to run a meat department?

A. I don't think anyone has to question that.

Q. Now, when you were operating the Del Farm Stores, you, of course, could not sell meat at night or the Del Farm Foods could not?

A. No. No, we could not.

Q. So that you have no experience with the night sale of meats in the Del—Del Farm operations?  
Del Farm Food experience?

A. No.

972 Q. And prior to that time you had no experience in the night sale of meats, had you?

A. Not in self-service operation.

Q. Yes.

A. But, in service operations I had had.

Q. But you had had none in self-service?

A. No.

Q. And you have never yourself had responsibility of any organization which was permitted to sell meats at night self-service, have you?

A. No—yes, I have. Benner Tea Company.

Q. Benner Tea Company? I thought you were purely a consultant, though.

A. Consultant and an operator at the same time, while

I was there. I took over the operations. I was consultant at first; then I took over the entire operations for about two months. It was a four month deal.

Q. I haven't—I misunderstood your testimony.

A. And I have—I do have some experience with the night operations with Benner Tea Company.

973 Q. Is that an independent or self-contained operation, Benner Tea Company?

A. Independent chain.

Q. It is an independent chain?

A. Yes.

Q. And had there been an upset in management? How come they—why did they hire you to consult with them; that is what I am trying to get at.

A. Well, a firm is going to go broke; they would do anything. So they hired me to see if they could get it in condition.

Q. They were not operating successfully?

A. No. And we made it successful in four months. We turned it into black figures in four months.

Q. Well, I don't—

A. That's right.

Q. And you continued the night sale of meats?

A. Yes, sir.

Q. Now, in expressing your opinion to counsel, you said that you objected to the night operations of meats.

I gathered that you objected to it while you were  
974 operating Del Farm here in Chicago; is that correct?

A. No, I did not. I said I did not object to night operations of meats. I objected to night operations without an employee.

Q. All right.

A. My objection is not—without an employee and—

Q. All right. Did you ever voice this objection to operating at night without employees on duty?

A. Yes, I have.

Q. Did you tell that to Mr. Kelly?

A. I think I have, yes.

Q. When?

A. Well, I think I must have told it to him several times. If not Mr. Kelly, other people, people experienced in the business, I have told them that.

Q. Wait just a minute. We will get to them all, but I wanted to rivet your attention now to Mr. Kelly.

Do you recall participating at all in the negotiations that led to the Amalgamated contracts in the fall of 1957?

A. Yes, I participated in those contracts.

Q. All right. Now, there were negotiations there 975 that ran roughly from September on pretty well through November, do you recall that, of 1957?

A. Yes. I generally recall it.

Q. During those negotiations, either privately to Mr. Kelly alone or in a meeting where you were all assembled, did you voice this objection to night operations without butchers on duty to Mr. Kelly?

A. No, I don't think so. I don't think it was even discussed at the time. As I remember it, we were discussing night operations. Without employees—that didn't enter into any discussions, I don't believe, until the issue, I think a year or two later, the issue came about of what my opinion of it was, and I have seen some of these night operations since.

Q. Well, Mr. Witness, please confine yourself to the 1957 negotiations.

A. No, I am quite sure I did not discuss that with Mr. Kelly, because that wasn't the issue at the time.

Q. Was there anyone in 1957 authorized to speak for Del Farm Food Stores in those negotiations other than Ted Meindl?

976 A. No, sir.

Q. So that if there were any negotiating sessions

at which you were absent, your organization had no one there to speak for it, is that correct?

A. That is correct.

977 By Mr. Christensen:

Q. Did you tell Kelly in, let's say '55 or '56, that you thought there should be no night operation unless butchers were on duty?

A. No, sir. No.

Q. Did you ever say that in substance to Kelly?

A. No, I don't think so. At that time I don't think there was any discussion along those lines at all.

978 Q. After 1957, have you ever said that in substance, that there should be no night operations without butchers on duty?

A. No, I don't believe I have.

Q. Have you ever told that to any of your competitors or your fellow people in the industry?

A. I think we have discussed the possibility, the soundness of opening it operating without employees. In substance we have discussed it pro and con.

Q. Within the industry?

A. Within the industry, I think it has been. It is in later years when this issue—when it became an issue.

979 Mr. Christensen. I am not asking him about negotiations.

Mr. Christensen: It is not. It is the antithesis.

Mr. Dunau: It is the fulfillment of negotiations.

Mr. Christensen: Well, all right.

Mr. Dunau: I will stand on my objection.

The Court: He may answer.

By the Witness:

A. Well, that is a question. You know I did not attend all those meetings, and I do not believe I knew of it at the time.

980 By Mr. Christensen:

Q. Have you discussed this subject with counsel?

A. This subject?

Q. That you have been testifying about here today?

A. Yes.

Q. And how often?

A. Once.

Q. When?

A. Once, and then right before we came in here.

Q. Well, I assume a little while today?

A. Yes.

Q. Now when was this once time?

A. I believe it was three weeks ago.

Q. Three weeks ago. Where did that discussion take place?

A. Down at Mr. Kelly's office.

Q. Mr. Kelly's office?

A. Yes.

Q. Where is your office?

A. My office is at 524 Maple Avenue.

Q. In Wilmette, in your home?

981 A. Yes.

Q. So you went into Emmet Kelly's office about three weeks ago and sat down with Emmett and his lawyers and discussed this, is that correct?

A. That's correct. They asked me my opinion on it.

Q. How long were you there, Mr. Meindl?

A. Well, I don't think I spent over an hour or an hour and a half. An hour and a half at the most.

Q. An hour and a half.

Now, is it true, as a merchandising proposition, that by

patronage by your customer acceptance of a marketing program you can pretty well determine whether it pleases or displeases the customers?

A. I think we can.

Q. They are the ones who really vote to whether service with or without butchers is satisfactory by their trade, don't they?

A. Repeat that again, counsel.

Mr. Christensen: Read that.

(Question read.)

By the Witness:

982 A. Well, there are several ways of answering that.

By Mr. Christensen:

Q. Well, answer it the truthful way.

A. That's the only way I am giving it to you.

Q. Go ahead.

A. We, in the food business, including Jewel, National, or anyone else, we open up a store. We quite often steer a customer a certain direction in a store.

You see, subconsciously many times there are things that, because of our actions in the store, of our movement, we place a produce department in a certain area, and we hope she will go in that area.

She goes to the meat department for certain reasons. She goes to the frozen food department for certain reasons. We direct that customer in every one of these areas, without a vote on the deal.

Now, I think that ought to answer it. The customer does not always have a vote on what to say, what happens in these stores.

983 Q. Mr. Meindl, let's get back now to what I asked you.

The customer is the one who finally determines whether night operation of a self-service meat market on the slow



nights of the week in any event is satisfactory by his or her patronage or lack of patronage?

A. Well, I would say so.

Q. That is true, isn't it?

A. Yes, that's right.

Q. And if you have a store where the ratio of night sales of meat to groceries remains constant before and after 6:00 P. M., although no butchers are on duty after 6:00 P. M., can you conclude that the night sale of meats without butchers on duty is satisfactory, at least to the customers of that store?

A. No, I could never come to that conclusion.

Q. You could not?

A. No. I have made these observations as I have mentioned here before, because of the condition of the 984 counters—

Q. Did you ever make any such observation in any Jewel-managed store?

A. No.

986 By Mr. Christensen:

Q. Have you ever been in a Jewel Store where meats are vended at night, self-service, without a butcher on duty?

A. No, sir.

Q. What?

A. No, sir.

Q. And, as a matter of actual knowledge you have made no observation and have no knowledge as to the conditions of the counters in a Jewel meat store operated without butchers on duty, do you?

A. Yes, I made some observations in the daytime and I found some stores.

Q. Mr. Witness, will you please answer my question instead of arguing?

A. No, I did not argue that point. You just asked me that.

Q. You have no knowledge as to Jewel Stores on night operations without butchers?

A. No, sir. I do not.

Q. You have never been in one, have you?

A. No, sir.

987 Q. All right. How long have you known about this lawsuit, Mr. Meindl?

A. Honestly, I don't know. It could be two years, a year.

Q. Some little time?

A. Yes. A couple of years, three years. I don't know.

Q. Have you ever discussed this lawsuit with anyone beside Mr. Kelly and his lawyers?

A. No, I have never. I think that—no, I have never discussed the lawsuit. I was told, I believe by Mr. Kelly, that there was a lawsuit, but he never discussed it with me at all.

Q. When did he tell you that?

A. This, I don't know. I know that's—

Q. Some two, three, four years ago?

A. Could be, yes.

Q. Well, you weren't running any meat department at that time, were you?

A. No.

Q. Do you see Mr. Kelly fairly frequently?

A. Well, I consider him a good friend of mine, but  
988 I don't see him frequently.

989 Mr. Dunau: Would you mark these Defendant Union Exhibits 25 through 30 for identification, and would you mark that 31, 32, and 33?

(Said documents were marked Defendant Union Exhibits 25 through 30, and also 31, 32, and 33 for identification.)

If your Honor please, Mr. Christensen and I have agreed to the receipt in evidence of certain documentary matters.

Of course, Mr. Christensen does not agree as to the weight or materiality of these exhibits.

As Defendant Union Exhibit 25, a collective bargaining agreement between Food Industry, Inc.—

Mr. Christensen: Will you go slow enough so Fred could jot them down?

Mr. Dunau: Yes.

Mr. Daugherty: That is number what?

Mr. Dunau: Defendant Union Exhibit 25, an agreement between Food Industry Committee and Amalgamated Local No. 81, pertaining to meat markets.

As Defendant Union Exhibit 26, an agreement between Wholesale and Retail Fish Dealers of Seattle, Washington, and Retail Fish Workers of Local 81, of the Amalgamated Meat Cutters and Butcher Workmen of North America.

As Union's Exhibit 27, an agreement between Food Industry, Inc., and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 151.

As Defendant Union's Exhibit 28, an agreement between Amalgamated Meat Cutters Union No. 333, and Silver Bough Employers' Association.

As Defendant Union's Exhibit 29, an agreement between Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 384, and Meat Dealers of Anaconda, Montana.

As Defendant Union's Exhibit 30, an agreement between Amalgamated Meat Cutters and Butcher Workmen Local Union No. 114, and Retail Meat Markets in St. Paul, Minnesota, and vicinity.

As Defendant Union's Exhibit No. 31, a study entitled, "Consumer Expenditure for Meat By Cities."

As Defendant Union's Exhibit 32, a study by the U. S.

Department of Agriculture, Household Food Consumption Survey, 1955, Report No. 1, which I have excerpts, Page 1, 3 and 66, from that report.

As Defendant Union's Exhibit 33, a study by the 991 U. S. Department of Agriculture, entitled, "Household Food Consumption Survey, 1955, Report No. 6."

We have excerpts from Page 1—or we have taken Pages 1 and 2 from that report of this exhibit.

Mr. Christensen: Our position as to these is that we agree these are authentic reproductions of contracts. The Exhibits 29 to 30 are contracts of the Meat Cutters Union at the localities counsel mentioned. We don't think they are material. It is the same general situation as existed with respect to the Cleveland contract and I think your ruling would be the same, and I therefore suggest they go in subject to our objection.

As to these other documents, again, we think they tend to prove nothing but I am not going to object to them if counsel wants to put them in.

The Court: Well, they will be received subject to the objection.

(Whereupon DEFENDANT UNION'S EXHIBITS 25 through 33, inclusive, were received into evidence.)

994

Wednesday, November 7, 1962,  
10:00 o'clock, A. M.

Court convened pursuant to adjournment.

996 WALTER RUDOLPH SANTELER, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Dunau.*

Q. Would you state your full name, please, sir.

A. Walter Rudolph Santeler.

Q. And try to keep your voice up, please, Mr. Santeler.

Where do you live, sir?

A. I live in Rockford, Illinois.

Q. What is the address there?

A. 3510 Rural Street.

Q. Are you a member of Local 189?

A. Yes, I am.

Q. Have you been a member of that local since about January 1, 1959?

997 A. Yes, I have.

Q. Before then, were you a member of Local 546?

A. Yes, I was.

Q. And have you been a member of Local 546 since about December of 1943?

A. Yes, I was.

Q. For whom do you now work?

A. The A&P Tea Company.

Q. What store do you work in?

A. The A&P on Alpine and Newberg Roads in Rockford, Illinois.

Q. What is your job at the store?

A. I am a head meat cutter.

Q. How many employees do you supervise?

A. Three.

Q. Is there sometimes a part time additional employee who comes in?

A. Yes, yes.

Q. So that it would be three, or four would be additional?

A. Sometimes four, yes.

Q. When did you first begin working in a meat department, sir?

A. I started as a delivery boy in about 1942.

Q. And for whom did you work as the delivery boy?

A. His name was I. L. Langson, and he was at 6538 Sheridan Road.

Q. And did Mr. Langson operate a service meat department at that time?

A. Yes, he did.

Q. When did you first begin working as an apprentice meat cutter?

A. It must have been in September or October of 1943.

Q. For Mr. Langson?

A. Yes.

Q. And did you work as an apprentice meat cutter for Mr. Langson until you went into military service?

A. That's right.

999 Q. And when did you go into military service?

A. December 20th of 1944.

Q. And when did you return from service?

A. It was the beginning of August, 1946.



Q. And did you return to work for Mr. Langson as an apprentice meat cutter?

A. Yes, I did.

Q. And how long did you stay with him?

A. I stayed with him until the first of the following year. That was—that would be 1947.

Q. Now was that in January about of 1947?

A. Yes, it was.

Q. Now in January of 1947 did you go to work for the Jewel Tea Company?

A. Yes, I did.

Q. And in what capacity?

A. As an apprentice meat cutter.

Q. Now did you then become a journeyman meat cutter working for Jewel Tea?

A. Yes. Approximately two or three months after I was with them, I became a journeyman.

Q. Would that be about March of 1947?

A. That's right.

1000 Q. In 1952, did you become a head meat cutter for Jewel Tea Company?

A. Yes, I did.

Q. Now did you continuously work for the Jewel Tea Company between March of '47 and 1952 as a journeyman?

A. Except for the time that I was an apprentice for the two or three months.

Q. Yes. And how many stores did you work in for Jewel during that period of time before you became a head meat cutter?

A. There were about five that I worked in.

Q. When you were made a head meat cutter, in what store did you work?

A. The first one was at 22 Circle Drive, in Elmwood Park, Illinois.

Q. Was this a service market?

A. Yes, it was.

Q. And how long did you stay in that store, about?

1001 A. I couldn't give you an exact answer but I would guess that it was about a year and a half.

Q. And what was your next job with Jewel Tea?

A. From there, I was promoted to a self-service type market.

Q. As a head meat cutter?

A. Yes.

Q. What was the location of that store?

A. That store was at 3804 Fullerton Avenue.

Q. And can you tell me for what period of time you continued to work as a head meat cutter for Jewel in the Chicago area?

A. What period of time?

Q. Yes. How many years?

A. I worked from 1952 until I left Chicago for Rockford in—let's see, from 1952 and I went to Rockford in '58.

Q. Did you move to Rockford about November 10, 1958?

A. Exactly.

Q. Now while you were working as a head meat cutter for Jewel in the Chicago area, about how many stores did you work in?

A. As a head meat cutter. It was four or five.

1002 Q. Were all the self-service markets except for the first store in which you worked?

A. That's correct.

Q. What was the cause of your move to Rockford, Illinois?

A. My immediate supervisor came to me and asked me if I would go to Rockford to open the meat markets in the stores in the Rockford area.

Q. And you agreed to go to Rockford to open the meat markets for Jewel in that area in Rockford?

A. Yes.

Q. What was the first Jewel store you worked in, in Rockford?

A. It was at 3510 East State Street.

Q. When did that store open for operation, sir?

A. It was about the 19th, about nine days after I moved there in '58.

1003 Q. Would that make it November 19, 1958?

A. Yes.

Q. And how many butchers were under your supervision at that store when you opened the meat department for operation?

A. When we opened, we opened with approximately twelve.

Q. Twelve?

A. Approximately twelve.

Q. And did that complement of butchers drop thereafter?

A. Yes, it did.

Q. And what did it become?

A. I believe we finally went down to five or six men.

Q. Was this a self-service meat market?

A. Yes, it was.

Q. Did it operate at night?

A. Yes, it did.

Q. How many nights?

A. Five nights.

Q. What were they?

A. Monday through Friday.

1004 Q. And what were the hours?

A. From nine to nine on those days.

Q. That is from 9:00 A.M. to 9:00 P.M.?

A. Yes, sir.

Q. Now, on Monday, Tuesday, and Wednesday, how many butchers were on duty at the Rockford store?

A. It was—

1005 Q. At night?

A. At night. There were one or more depending on the amount of work that had to be done. In other words, the preparation. If you were prepared for business, we would have one there, if you weren't prepared for business, you kept them, whatever men you needed to be in this business.

Q. And when you say prepared for business, what do you mean, sir?

A. Well, a full supply, a variety of the different cuts of meat.

Q. On Thursday night, how many butchers did you have on duty in that store?

A. Generally, with the business in that store, we would go to two men on Thursday, and that—even in that case, it would be two or more again, because a lot of times with a real busy day during the day, I would have to hold more men to prepare meat for the customers that would come in shopping that night.

Q. You would have to prepare for shopping that night, would you also be preparing for shopping the next morning?

1006 A. Generally not, although sometimes we did.

Q. What was the highest number you would have coming in on Thursday night?

A. Of meat cutters?

Q. Meat cutters, yes, sir.

A. I could only guess. I would say that probably Thursday, except for the grand opening time, probably on a Thursday it wouldn't be more than four.

Q. There were times when you had as many as four working on Thursday night, is that correct?

A. Like I say, I can't pinpoint a particular time that it had, but I am sure that it must have been.

Q. All right. On Friday, how many butchers did you have on duty in that store at night?

A. Again, generally, in fact without a doubt, a Friday meant two men for sure if you were prepared, and if you weren't prepared you had to have more men to cut and process the meat to get it out into the counter.

Q. Did you open the meat department of a second store for Jewel in Rockford?

1007 A. Yes, I did.

Q. What was the second store, the location of it?

A. It was at 3214 Auburn Street.

Q. And, what was the date that this second store was opened?

A. I don't know the exact date, but I know it was shortly—about six months, maybe in April of the following year.

Q. Would it be in April, 1959, sir?

A. Yes, about there.

Q. Was that a self-service meat department?

A. Yes, it was.

Q. And did you open that meat department in your capacity as a head meat cutter for Jewel?

A. That's right.

Q. What were the hours of operation in that store?

A. 9:00 to 9:00, Monday through Friday, 9:00 to 6:00 on Saturday.

Q. Were butchers on duty at night in that store?

A. Yes, sir, they were.

Q. How many butchers did you have on Monday, Tuesday, and Wednesday?

1008 A. Relatively the same situation we had on State Street, one—one or more depending again on the needs on Monday through Wednesday, and then on Thursday and Friday—Friday for sure, it was a requisite to have two men there. One man couldn't handle it, and



generally it was two men on Thursday or more. If we were prepared, two would be sufficient. If you were short of items, for instance, on a big sale of pot roasts or steaks which require quite a bit of cutting and trimming, you would have to put more men on to process this and put it into the counter.

1009 Q. Did you open the meat department of a third store for Jewel in Rockford?

A. Yes, I did.

Q. What was the location of that store?

A. That was at 9th and 23rd. The address is 1255 23rd Avenue, I believe.

Q. Did you open that store about February of 1960?

A. Yes. About then.

Q. Was this a self-service meat market?

A. Yes, it was.

Q. What were the hours of operation in that store?

A. Relatively the same, although that particular store didn't hit off in business like the others, so generally one man per night at the beginning of the week was sufficient. This was after opening, of course. During opening, it took more, but when we leveled down, one at the beginning of the week was enough and generally two on Friday night, and sometimes you could get by with one on Thursday, but not very often.

Q. When you say the beginning of the week, are you referring to Monday, Tuesday, and Wednesday?

1010 A. Yes, I am.

Q. Was this store at 1255 23rd Avenue the last in Rockford, the last store that you worked in for Jewel Tea?

A. Yes, it was.

Q. When did you resign your employment from Jewel Tea?

A. It was about May, I believe, in '61.

Q. For whom did you then go to work?



A. For the A&P Tea Company.

Q. What was the first store you worked for, for A&P, or worked in—I am sorry. What was the first store for A&P in which you worked?

A. It was one at—I don't know the number of the street, but it was on Kishwaukee Avenue in Rockford.

Q. Is that K-i-s-h-w-a-u-k-e-e?

A. That's correct.

Q. And for what period of time did you stay in that store?

1011 A. One week.

Q. What was the purpose of that one week in that store?

A. It was an indoctrination period for preparing meats, to learn A&P's methods preparatory to opening of a brand new A&P in Rockford.

Q. Now, in the store that you stayed in for one week, did that store operate at night?

A. Yes, it did.

Q. What were the nights?

A. Monday through Friday, 9:00 in the morning until 9:00 at night, and Saturday from 9:00 to 6:00.

Q. Was a butcher on duty each of the nights?

A. Yes.

Q. Now, you stated that you worked in this store for a week preparatory to the opening of a new A&P store in Rockford, is that correct?

A. That's right.

Q. What was the location of this new A&P store?

A. This was at Alpine and Newberg Road in Rockford.

1012 Q. In what capacity did you go to work for A&P in that store?

A. As journeyman.

Q. For how long did you work in that store as a journeyman?

A. Approximately six months.

Q. What were the store hours in that store?

A. Monday through Friday, 9:00 to 9:00, and Saturday, 9:00 to 6:00.

Q. Was that also the store hours in which the meat department was in operation?

A. Correct. Correct.

Q. How many meat cutters were on duty in the meat department, Monday, Tuesday and Wednesday?

A. The nights—

Q. Yes, at nights.

A. (Continuing.) —that they were?

1013 Well, after—again, after the leveling off—of course, at grand opening, you ran into nights where just about every meat cutter there worked at night, but after we leveled off we had generally one or occasionally he would have to leave an extra man to—the head meat cutter would have to have an extra man to again bolster any cutting or something would have to be done there.

Q. How many meat cutters would you have on duty on Thursday in that store?

A. He always had two when I—when we opened. This was after the leveling off period.

Q. After the leveling off?

A. And sometimes he even kept more of us there.

Q. There were two or more, is that correct?

A. That's correct.

Q. And on Friday, what was the situation with respect to the employment of meat cutters at night?

A. The same as Thursday, always two and sometimes more.

Q. Now, you worked in this store for about six months. Is that correct?

A. That's right.

1014 Q. And what happened at the end of that period of time?

A. At that time I was promoted to head meat cutter with A&P and they sent me out to the Freeport, Illinois, store.

Q. And are you still working in that store now?

A. No, I am not.

Q. When did you leave that store?

A. About July of this year.

Q. All right. Now, let's stay with the Freeport store.

What were the hours of operation in the Freeport store, the meat department hours of operation?

A. The meat department hours were from 9:00 to 9:00 on Monday through Friday and from 9:00 to 6:00 on Saturday.

Q. On Monday, Tuesday, and Wednesday, how many meat cutters did you have on duty at night?

A. At night. I had one each night.

Q. And on Thursday, how many employees did you have on duty?

A. It was almost always three or four.

1015 Q. Now on Friday, what was the situation with respect to the employment of meat cutters at night?

A. Almost always five.

Q. Now, what store are you presently working in?

A. I am back at Alpine and Newberg at Rockford, Illinois.

Q. In what capacity?

A. As head meat cutter.

Q. And is that the place that you are now working?

A. Yes, it is.

Q. And what are the hours of operation of the meat department in that store?

A. From 9:00 to 9:00, Monday through Friday, and 9:00 to 6:00 on Saturday.

Q. And how many meat cutters work Monday, Tuesday, and Wednesday in that store?

A. At night, you mean?

Q. At night, sir.

A. I have one there each night.

Q. And on Thursday, how many meat cutters do you employ in that store at night?

A. One, sometimes two.

1016 Q. And on Friday, how many meat cutters do you employ in that store at night?

A. Two, sometimes four.

I might add that, for instance, this particular week I had two men there working Monday night. I mean as an example of one or more.

Q. All right, sir. Now, during the time, sir, that you worked for Jewel as a head meat cutter, did you attend what are called district meetings?

A. Yes, I did.

Q. How often were these meetings called?

A. Generally, they were once a month.

Q. And who conducted these meetings?

A. The District supervisors of the departments involved. In my case, it would be meats.

Q. And how many stores were under the direction of a District supervisor, usually?

A. About the time that I left the Jewel, my particular District consisted of about 16 stores.

Q. And can you give us the name of the District supervisor in the group of stores in which you were a part when you were with Jewel at Rockford at the time  
1017 that you left?

A. His name was Mr. George Seidel.

Q. What was the purpose of a District meeting, sir?

A. It was a method of conveying company policies and cutting procedures and anything else that the company

wanted us to know, to a group rather than for a supervisor to go around to individual persons and convey the same message sixteen times.

1018 Q. Please tell me what was communicated to you concerning the presence of a head meat cutter at the counter while the meat department was in operation?

A. One of the—of course, at that time, Mr. George Seidel had certain things that he said. He called one a directive, and I don't know—it was a case of either this is company policy and this is a must, and he said that one of the things that is a must is a man on the counter at all times and they almost insisted that the man on the counter should be the head meat cutter. In other words, he made it quite emphatic that there should be a man on the counter and also that that man should be—

Q. When did he tell this to you?

1019 A. At these District meetings. This was not just once. This was—generally, at these District meetings, policy was gone over and over again just to keep the fellows in mind of the fact that they sometimes forget.

Q. Please state what was told to you concerning the reasons for having a meat cutter on duty at the counter at all times?

A. Jewel wanted to—and I think they succeeded—they wanted to create a friendly atmosphere between the fellow that was selling the meat and the customer that was buying it. They wanted him to perform any services which this particular customer might want to be done with what she was buying. There were cases where even special orders were requested of this man at the counter.

Mr. Christensen: Well, now, I move to strike that. He obviously has gotten off in a conversation. The detailed part of his answer, I move to strike it.

1020 The Court: Strike it.

By Mr. Dunau:

Q. Please tell us at this point only what Mr. Seidel told you concerning the reasons for having a man at the counter?

By the Witness:

A. This was something that Mr. Seidel never said.

Q. How was company policy communicated to you?

A. Through Mr. Seidel.

Q. What did Mr. Seidel say?

A. Well, he stated that he wanted a man on the counter at all times.

Q. Did he tell you why he wanted a man at the counter at all times?

1021 Mr. Christensen: Object to that. He has already answered.

The Court: Overruled.

Answer that question. Did he tell you?

By the Witness:

A. Yes, he did tell me.

By Mr. Dunau:

Q. Please state what he told you?

1022 By the Witness:

A. They wanted a man on the counter to create a friendly atmosphere between—a friendly and courteous atmosphere between the meat cutters and the customer.

Q. Did he state anything further to you on this matter?

A. Yes, there were more reasons for having a man on the counter.

Q. Would you state what he said to you concerning those reasons?

A. It was to keep the counter straight, perform any



services which the customer might request and fill special requests that the customer might want that she 1023 can't find in the counter.

Q. Did he state to you when he said to keep the counter straight what should be done to keep the counter straight?

A. Well, no; but that is something that every—

Mr. Christensen: All right.

Mr. Dunau: All right. That is all.

Mr. Christensen: I move to strike everything after "No".

1024 By Mr. Dunau:

Q. Just tell us what you did, sir.

The Court: Listen to the questions and answer directly.

By the Witness:

A. I straightened the meat counter.

By Mr. Dunau:

Q. What did you do in straightening the meat counter?

A. I took bloody packages out of the counter and I took torn packages out of the counter; I took packages which looked to be turning color or offbeats off of the counter for reprocessing or for throwing out.

Q. What does it mean to pull a bloody package from the counter?

A. I take a package that could make a mess and take it out of the counter and send it in the back, and if that product is still salable, they will put it in a new tray, a dry tray and send it out, rewrap it and put it in the 1025 counter again.

Q. Now when you find a cellophane torn, the cellophane wrapper on the package torn, what do you do with that?

A. That also has to be pulled and rewrapped.

Q. Where is the rewrapping done?

A. In the wrapping room.

Q. When you stated that some meat had to be reprocessed, will you state what is entailed in that?

A. That would go back to the back room or cutting room.

Q. Now are there reasons for reprocessing meat aside from the spoilage that that meat might be involved in?

A. Only the fact that torn packages or bloody packages.

Q. Do you sometimes have a pork loin roast, which is not moving and then are required to reprocess it into a different item in order to move that meat?

A. That is correct.

Q. Would you explain what is done in that case?

A. Yes. Generally, a man on the counter could use his judgment and when he sees that a particular  
1026 item isn't moving, he can reprocess this thing into something else and thereby stimulate the movement of the item.

Q. Now would you illustrate by a pork loin roast?

A. Yes. For example, you could have twenty pieces of pork loin roasts on the counter and the movement is mediocre, but by taking ten of those twenty pork loin roasts out, slicing them into sliced roasts, you would have two different, completely different items for a customer to have a choice of, and instead of ending up with twenty pork roasts to sell, you have ten roasts and ten sliced chops.

Q. Do you replenish stock in the cases?

A. Yes.

Q. What would be the reason for replenishing stock in the cases?

A. As customers buy, they leave empty spaces in the counter and, of course, you have to fill them in.

Q. At the Rockford stores of Jewel Tea, was there a telephone at the meat counter?

A. All three of the ones I worked for—worked in, in Rockford, had a telephone right behind the meat counter where I could talk to these fellows that were cutting in the back room.

Q. And what was the reason for having the telephone at the meat counter?

A. It seems that—

Q. Do not tell us what it seems. Just tell us the reason.

A. Oh. Their meat cutters were working on the counter and were finding excuses not to be on the counter, and in order to eliminate that excuse, we had telephones so that we could stay right out there and talk to the fellows in the back concerning special requests and concerning things which we needed cut for the counter.

Q. So that as I understand it, the telephone was used by the man at the counter to communicate to the butchers working in the back?

A. That is correct.

1028 Q. Now at the three Jewel stores in which you worked in Rockford, would you please state whether the services that you have described, which were performed by a meat cutter at the counter, were performed between the hours of 6:00 and 9:00 at night?

Q. Do you understand the question?

A. Yes. But the things I described, you mean the torn packages and the disarrangement of the counter and so forth?

1029 Q. That is correct.

A. Yes, these things were performed at that time.

Q. Please state what you have observed while you were in the employ of Jewel concerning customer practices in the handling of meat at the counter?

A. This one particular store that I worked in was quite

notorious for people who would come in and actually throw packages from one section of the counter into another.

Quite frequently I would run into the case where meat is taken out of the meat counter and left on a grocery shelf.

Is that the type of thing that you mean?

Q. Yes. please go on. That is what I am thinking of.

A. I find—in fact, I have even had cases where something in the counter, when it was processed, it was in extremely good condition and it seemed that under cellophane and with about an hour or an hour and a half's time in the counter, I could detect the fact that this piece of meat was going and I have even run into cases and I still run into them now where I will actually see a woman picking a piece of meat up that I feel isn't salable and I will  
1030 stop her, take that away from her or tell her, explain to her that I could get her something that was fresher; that that wasn't quite what I would like to have her buy.

Q. Have you had experience with children at the counter?

A. Yes.

Q. Please state what your experience with children at the counter is.

Q. Just tell us what you saw.

A. Children run up and down the meat counter and poke holes, especially in the hamburger section, right through the package. They do it in any other soft meats that are in the counter also.

Q. Please state whether customers break open the cellophane packages.

A. Again, in certain neighborhoods that I have  
1031 worked in, you have some people that will actually tear a package open to see what is on the other side. For instance, on these sliced pork roasts, they will break

it in half to see how fat each individual pork chop is. I have run into cases like that quite frequently.

Q. Do these things or did these things happen at the three Rockford stores between the hours of 6:00 and 9:00?

A. I can't pinpoint a direct time when it did happen, but some of these items are happening all the time.

Q. And did they happen at the three Rockford stores between 6:00 and 9:00 at some times?

A. At some times, they did, yes.

Q. Did you pay a visit to the Jewel store located at 1755 Indianapolis Boulevard, in Whiting, Indiana, last night?

A. Yes, I did.

Q. What hour did you arrive at that store?

A. 7:30.

Q. And how long did you stay at that store?

1032 A. Only about ten or fifteen minutes.

Q. Were there customers in the store during the time that you were there?

A. In that particular store, there weren't any customers, except my wife and I.

Q. Did you observe the condition of the meat counter in that store?

A. Yes, I did.

Q. What did you find?

A. I found that everything was orderly and the conclusion—no, I can't say that, can I?

Q. Just say what you saw.

A. I saw meat that was on the verge of turning and I pointed things out to my wife. I said to her that  
1033 "Something—"

Mr. Christensen: Oh, oh, no.

The Court: Sustained.



By Mr. Dunau:

Q. Just tell us what you saw.

A. I saw meat that was on the verge of spoiling.

Q. What meat was that?

A. I saw chop suey meat that was spoiled, I saw spare-ribs that were spoiled and I saw beef roasts which were dark but which couldn't hurt anyone if they ate them, even though they were—you can't call them spoiled because they could be reprocessed. These other things couldn't even be reprocessed.

Q. All right. Did you visit a second store last night of Jewel Tea?

A. Yes, I did.

Q. What was the location of that store?

A. It was about 6900 on Indianapolis Boulevard.

Q. And what time did you arrive at that store?

A. Shortly after 8:00.

Q. And how long did you stay in that store?

A. Again, ten or fifteen minutes.

Q. And how many customers were in that store?

1034 A. There were—I would guess about twelve or fifteen that I—

Q. No.

A. Pardon?

Q. 6900 Indianapolis Boulevard, Mr. Santeler.

A. Oh, no, no, that is one that—it had not much business. Two or three, I suppose. There were more customers than the first one. The first one stood out in my mind because I observed none.

Q. Just tell us what you saw in the second store at this point.

A. Two or three.

Q. And did you observe any customers at the meat counter?

A. There were a man and his wife there.



Q. You saw a man and a woman?

A. Yes.

Q. Together?

A. Yes.

Q. Please tell us what you observed as to the condition of the meat counter in that store.

A. The meat was—again, it was orderly. He had less spoiled meat than the first store that I visited, although business seemed to be—

Q. Don't tell us what business seemed to be. Just tell us what you saw at the counter.

A. Where was I?

Q. You said that you saw less spoiled meat than at the first store?

A. That is correct. But I did see some things that I knew were cut the previous weekend.

Q. Did you visit a third store of Jewel last night?

A. Yes, I did.

Q. What was the location of that store?

A. It was on Calumet Avenue, about 70 or 7100.

Q. Was that on Hammond?

A. Yes, it was.

Q. What time did you arrive at that store?

A. Approximately 20 to 9:00, quarter to 9:00, something like that.

Q. How long did you stay in that store?

A. About ten minutes.

Q. About how many customers were in that store during the time that you were there?

A. That store stood out to me because it was—  
1036 Q. Just tell us how many customers were in that store.

A. Ten to twelve.

Q. Were there any customers at the meat counter?

A. No, I can't recall seeing any there.

Q. What was the condition of the meat counter?

A. It was very fresh and very orderly.

Q. What else did you observe at the meat counter?

A. There were two part time boys back in the cutting —no, in the wrapping room of the meat department.

Q. Did you do anything with respect to the persons you saw in the wrapping department?

A. Yes, I beckoned to one of them.

Mr. Christensen: What?

The Witness: I beckoned to one and he came out.

By Mr. Dunau:

Q. And what happened at that point?

A. I asked the young fellow if he had any other rump roasts. I told him that I wanted one that weighed about two pounds.

Q. And then what happened?

1037 A. He went back into the wrapping room, went into what they call a holding cooler and came out with two rump roasts and I selected one and when I took that I asked him if he was a meat cutter and he said no, he wasn't; that he was a part time boy there.

And with that I looked at the meat and set it down on the counter in the particular section that it belonged and I walked out of the store.

Q. Sir, does it require an experienced meat cutter to be able to detect whether the meat is on the verge of spoiling?

A. It certainly does.

Q. Does it require an experienced meat cutter to be able to detect whether the meat has spoiled?

A. Not completely, but, I mean, some customers can even tell if meat is completely spoiled, but there are some customers that can't tell this.

*Cross-Examination by Mr. Christensen.*

Q. Mr. Witness, as I understand your testimony, you resigned from Jewel to take a demotion to go with  
1038 A&P, is that correct?

A. That is correct.

Q. You were dissatisfied with the Jewel organization?

A. No, sir.

Q. But you were willing to take a demotion?

A. Positively.

Q. And how much loss of pay per week did that amount to?

A. By—oh, I'd say when I went to journeyman, I lost about fifteen dollars per week.

Q. You went to journeyman immediately, didn't you?

A. Yes, sir.

Q. When you left Jewel, you were a head meat cutter?

A. Correct.

Q. And when you left Jewel, did you have a job lined up with A&P?

A. Yes.

Q. Who arranged for you to get that job at A&P?

A. I did.

Q. Did you go and talk with someone in the A&P organization before you quit Jewel?

1039 A. Yes.

Q. Who did you talk with at A&P?

A. Mr. Art Thomas.

Q. Where is he located?

A. In Rockford, Illinois.

Q. In Rockford?

A. Yes.

Q. You told him that you wanted to get out of Jewel and would be willing to work as a journeyman to get out of it, to get away from Jewel and go with A&P?

A. That is correct. That is not how I put it. I merely asked him for a job.

Q. Well, in your own mind, you were willing to accept a fifteen dollar a week loss of earnings—

A. Positively.

Q. (Continuing.) —to get out of the Jewel organization?

A. Positively. I would have accepted that even to stay in the Jewel organization.

Q. You were willing to accept that to get out of the Jewel organization under the circumstances?

A. Yes, sir.

1040 Q. And you weren't anxious to change your place of residence or your city in which you worked? You stayed right in Rockford.

A. Positively.

Q. Now, as I understand it, there were more customers in the first store that you visited than in the second store, is that right?

A. No. You understood it wrong then. There were less—there were no customers at all in the first store that I visited.

Q. Well, if you did testify that there were more customers in the first store than the second store, you wish to correct that testimony?

A. If I did, positively.

Q. Because I think you first said that there were no customers and then you made that statement.

In each of the stores you visited, you found that the cases were very orderly?

A. Correct. I didn't say "very orderly," but the one that was very orderly was the third. The first two were orderly.

Q. All right. And in each of them was a fair variety of meats?

1041 A. I didn't say that either.

Q. I did not ask you that. I said in each of them there was a fair variety of meat?

A. Then I would have to say no.

Q. Which one didn't have?

A. The first two.

Q. What was lacking in your judgment that should have been at 1755 Hammond?

A. Well, a more variety.

Q. What particular variety was missing that you think should have been there?

A. Well, if I had been in that particular Jewel market, I would have had eight S boats of pork chops. That is one item.

Q. How many were there?

A. None.

Q. And what else was lacking at this 1755 store?

A. I can't say right now because that is—actually, that is not what I was looking for.

Q. What were you looking for?

A. Just to see if I could get service and to see the freshness and—can I explain why I went there in the first place?

1042 Mr. Dunan: Please just answer his questions.

By Mr. Christensen:

Q. What were you looking for?

A. Just to see the condition of the market and I can't remember right now just what particular cuts were missing. That one I know wasn't there, that 8 S pork chop, because it would stand out because I like—

Q. Well, were pork chops there?

A. Yes, there were.

Q. So what you are saying, it is your recollection that they didn't have any packages in which there were eight chops?

A. No. Eight S is the size of a boat. And you can get anywhere from—

Q. Eight is the size of a boat?

A. Yes. And you can put anywhere from eight to twelve pork chops in that particular boat.

Q. But there were smaller packages of pork chops there?

A. Correct.

Q. Have you ever worked in Hammond?

1043 A. No, I haven't.

Q. Do you have any knowledge as to the customer demand for numbers of pork chops in a purchase in the Hammond area?

A. No, I haven't.

Q. Do you assume that the market manager there knows the quantities of meats that the people in that particular area purchase—

A. Whether that manager knows more, better than I for that particular customer?

By Mr. Christensen:

Q. Yes.

A. I'd say I would imagine he does know if he has been there a while.

Q. Now, at the 6900 store on Indianapolis, where you got there at 8:00 p. m., you again found everything orderly in the counter?

1044 A. Yes.

Q. At the first store, 1755 and 6900 Indianapolis also, the second store, did you spy around and see if you could get someone to give you some service?

A. Yes, I did.

Q. And you were unable to find any?

A. That is correct.

Q. Was that what you were looking for?



A. No: It was merely to satisfy my own curiosity—  
It was to satisfy my own curiosity.

Q. Well, Mr. Witness, before you went out to do this, you talked with some people to arrange for you to make this survey, didn't you?

A. That's correct.

Q. Who did you talk to?

A. Mr. Kelly and Mr. Dunau.

Q. Mr. Dunau?

A. Yes.

Q. And had you ever worked as a detective before?

A. Not up till now.

Q. This was your first experience?

A. That I can recall. I might have tried to—

Q. Now what did this lawyer tell you to look for?  
1045 A. I can't remember him telling me to look for anything. The reason I went there was this: That—

Q. Did you have a conversation with him?

A. Yes, I did.

Q. Where did this conversation take place?

A. It took place in Mr. Kelly's office.

Q. That is on Wells Street, in the City of Chicago?

A. Correct.

Q. Did someone get in touch with you and ask you to leave your pleasant home in Rockford and come out on a rainy, cold night and come down and see Mr. Kelly?

A. I left yesterday afternoon.

Q. Did someone ask you to do that?

A. Yes.

1046 Q. Who?

A. Mr. Saltow, I don't know his title. I think he is president of the local that I belong to, in the Rockford area.

Q. So you went to Mr. Kelly's office?

A. Yes.

Q. What time did you get there?

A. About five to 1:00 yesterday afternoon.

Q. And did you have your wife with you?

A. No, I didn't.

Q. When did you talk with Mr. Dunau and Mr. Kelly?

A. Well, shortly after I arrived there, Mr. Dunau arrived.

Q. When did you talk with him?

A. It must have been from about 1:20 till about 3:30.

Q. Now during that hour or two hours and ten minutes of conversation—

A. Yes.

Q. (Continuing.) —1:20 to 3:30, Mr. Dunau asked you about your history with Jewel?

A. Correct.

Q. And he made notes of it. He made notes of it?

1047 A. Yes, he did.

Q. Now at what point in the conversation—was Mr. Kelly present during all of this time?

A. Yes, he was.

Q. And did he participate in the conversation along with Mr. Dunau?

A. Yes.

Q. At some time during that conversation, they asked you if you would go out and do this detective work, didn't they?

A. No, they didn't ask me that.

Q. Well, when did you first know that you were going out to do this work?

A. It happened this way:—

Q. Please, Mr. Witness, when did you first know that you were going out to do this work?

A. I don't know exactly when. What time, you mean?

Q. Approximately.

A. I don't know exactly what time. It could have been, oh, it could have been 2:30.

Q. 2:30?

A. It could have been that.

1048 Q. And did they discuss with you—tell you that the managers or some personnel from stores in that neighborhood had testified here?

A. What was that again?

Q. Did either Dunau or Kelly tell you that men who worked in those stores had testified here as to evening sales?

A. No, I don't recall that.

Q. They said they would like you to make this observation, however?

A. No. That is not the way they put it.

Q. Well, how did they put it?

A. I tried to tell you before. I was quite surprised. Mr. Kelly made the remark that we had some stores in—not in our particular local, but in the Meat Cutters Union that allowed stores to be open between the hours of 6:00 and 9:00 with no help there, and that amazed me because that was the first time that I had heard this.

And he then suggested that if I had never seen something like this, it might be a good idea for me, being this close to the area, to go down and see this store.

1049 In fact, he told me to go to one store just to look it over. He told me to go to the Whiting store, and I was so close to these others, that it was on my way to this expressway going around Chicago anyway, so I merely shot up this Indianapolis Boulevard, then up to the one on Calumet, and then I was only, I don't know how far I was from the tollway then. Maybe four or five blocks.

Q. Well, Mr. Witness—

A. Yes.

Q. (Continuing.) —where did you learn the location

of these stores? You just didn't happen to see them as you were riding along? You knew—

A. That is correct.

Q. Who told you where these stores were?

A. The Indiana toll gate man, I went to the west point exit of that Indiana tollway and he found that I had gone too far, so he let me go out and come back and go into Calumet Avenue there and he told me to go to—I gave him the address. I had the address of this Whiting store, you see, and I told him I wanted to go to 1755 Indian-1050 apolis Boulevard. So we went up Calumet to 119th Street and I turned right and evidently I went too far and I passed Indianapolis, because it was cutting on an angle and I didn't see the street name.

I came back on 119th until I hit Indianapolis and then I went down a few blocks and there was the Jewel.

For the second one then, I stopped at a Clark gas station and I had to ask there and the fellow was obliging enough to go in and he looked it up in the phone book and he told me, in fact. Otherwise I wouldn't even know what the numbers are, but he told me that the one Jewel is at 69, I believe, hundred, on Indianapolis Boulevard and he told me that the other one was in the 7000 block on Calumet and I knew that that was on my way to the tollway so I stopped in those two particular stores.

Q. So having seen one, you then took it upon yourself to find out where other Jewel stores were?

A. Positively. That is a habit.

Q. And did you do this on your own experience or is the union going to reimburse you for this time and 1051 your gasoline?

A. The union told me that they would pay me for the time that I lost through work by coming down here, but they haven't said anything about expenses like that.

Q. Well, when you came in, did you bring your wife in with you?

A. Yesterday, I did.

Q. When you came in at 1:00 o'clock?

A. Yesterday, yes.

Q. Where was she while you were at the union office?

A. She was at her dad's house. She was at her dad's house.

Q. I see. Now, as a matter of fact, there is a considerable variety of opinion, isn't there, as to the desirability of having beef that is aged?

A. There positively is.

Q. And just because a beef item is old, doesn't mean that it is unsalable, does it?

A. That is what I said.

Q. Now, Mr. Witness, in any of the stores that you visited last night, did you see any children running up and down the counter poking holes in packages?

A. No. But I did see one hamburger package that did have a finger poked through.

Q. You saw one hamburger package that had a hole in it, didn't you?

A. That is correct.

Q. You do not know how the hole got there?

A. That is correct.

Q. You yourself have never worked in a market where meat was available self-service or after 6:00 o'clock without a butcher being on duty, have you?

A. Correct.

Q. And as the head meat cutter, that is sometimes referred to also as the market manager, is it not?

A. With Jewel he is, yes.

Q. And with Jewel, he is the man who must decide at any given time how many packages of meat to have in the counter? That is his responsibility, isn't it?

A. Correct.

Q. You never had to make a decision at any time as

to how to stock a meat counter for an anticipated  
1053 three hours of business without a butcher in attendance, did you?

A. That is correct.

Q. And, as a matter of fact, the reason that you left Jewel was that you did not like the pressure of a head meat cutter job under the Jewel system of operation? You wanted to get away from that, didn't you?

A. That can't be true because I am a head meat cutter again.

Q. Well, never mind whether it can't or can.

A. Well, it is not true.

Q. That you didn't want to be a head meat cutter?

A. That is not true.

Q. I understood you to say that you would have stayed with Jewel if they would have given you a journeyman job.

A. No, I didn't say that.

Q. You did not say that?

A. That's right. I said I would take a cut in pay and I would stay with Jewel. You may find it hard to understand because you were bringing out the point that I took a demotion to go to A&P.

1054. Q. Yes.

A. Every year at Jewel we have what we call personnel interviews and the two years previous to my leaving Jewel, in my personnel review, they ask you, "What are your plans with Jewel?"

I told the man that interviewed me, I believe, in one case it was Mr. George Seidel, and I can't remember, it may have been the personnel director the previous year, and I assume they wrote it in my personnel file, I told these people right then that I was interested in learning anything. I told them, and I believe they wrote it in that file, that I would take a cut in pay if they would give me



a job where I could learn anything and I remember distinctly even using an example, that I would take a job as a grocery clerk if I could learn something.

That is what I meant when I—that is why it seemed funny to me when you said, “You took a cut in pay to go to A&P.” The cut in pay didn’t bother me at all.

Q. Well, did you learn more as a journeyman meat cutter at A&P than you had learned as a market 1055 manager at Jewel?

A. No. Positively. I had fourteen and a half years at Jewel and I was learning all the time—

Q. Please, please. You were learning at Jewel, weren’t you?

A. That is correct. Well, I didn’t learn more at A&P in a year and a half, but I didn’t stop learning either.

Q. And you have relatively the same position, as I understand it, in the A&P organization today that you had in Jewel a couple of years ago?

A. That is correct.

Q. Now you testified that one particular store that you worked in was notorious for disarrangement of cases?

A. Yes, it was.

Q. What store was that?

A. It was one that I worked in on Fullerton Avenue, 5600 on Fullerton Avenue.

Q. Stores vary one from the other in the nature of their trade, the customers who come into them, don’t they?

A. That is correct.

1056. Q. Both as to the product—

A. Demands.

Q. (Continuing.) —that the neighborhood buys and as to the way that the customers conduct themselves in the establishment?

A. That is correct.

Q. And it is the province of the management to keep

with the conditions as they exist in these varying neighborhoods, isn't it?

A. It is as long as he follows company policy.

Q. Now, when you referred to a bloody package, am I correct in assuming that what you mean is a package that is perfectly all right, except there has been a seepage of blood from the meat inside the package?

A. You mean if the meat is perfectly all right. The package isn't perfectly all right, but the meat is all right, but the package is sopping wet, you know, with blood. That would be a bloody package.

Q. That is what you referred to as a bloody package?

A. Correct.

Q. And that is simply a matter of—

1057 A. Rewrapping.

Q. Rewrapping?

A. Correct.

Q. Now I had a little tip from Mr. Dunau as to what you said with respect to the telephone at the meat counter in these Jewel stores in Rockford.

A. Yes.

Q. The fact is, as I understand it, that the meat cutters didn't particularly like counter work. They liked to stay in the back room, didn't they?

A. No. You have meat cutters that like counter work and you have some that like cutting meat and some like wrapping.

Q. The object of having the telephone out there—

A. Yes.

Q. (Continuing.) —as I understand it, is so that the head meat cutter could be out in front at the counter keeping a general supervision over things and at the same time telephone instructions back to the back room without leaving the counter, isn't that true?

A. That is true. That is true.

Q. In the stores in Rockford in which Jewel operated between 6:00 and 9:00 at night, did you make any observation as to whether the customers bought any greater, or any lesser proportion of meat to groceries after 6:00 o'clock?

A. I don't know. Maybe if you will repeat it, maybe I will get it.

Q. My question was a difficult one. Let me see if I can make it a little bit clearer.

A. O. K.

Q. I am trying to find out whether you made any observation and can express an opinion as to whether the shopping habits of customers changed after 6:00 o'clock. That is, do you know in a general way roughly what the volume of meat sales were to grocery sales before 6:00 o'clock?

A. Are you asking me this: Do I think that meat consumption per capita is increased because people can buy meat after 6:00, is that what you mean?

1059 By Mr. Dunaun:

Q. Mr. Witness, I understand you have talked this case over with Mr. Kelly, and I most certainly have not asked you that question.

A. Then I don't understand your question, sir.

Q. Well, in these particular stores, did you ever make any observation as to the volume of meat sales in relation to the volume of grocery sales?

A. That we ran into all the time. I mean that was a figure that I had to keep.

Q. All right.

A. Yes.

Q. Now—

A. We called that per cent of total. Per cent of total business.

Q. Per cent of total?

A. Total business, yes.

Q. Now, did that percentage—if you know, say so; if you don't, say so.

A. Yes.

Q. Did that percentage change after 6 o'clock?

A. Do you mean in comparison to stores that I ran 1060 in Chicago or—

Q. No, no, no.

A. Well, how do you—

Q. I mean in a store in Rockford?

A. Well, these stores were always open, you see, after 9—after 6.

Q. I see.

A. So I would have nothing to compare it except by stores I worked in in Chicago.

Q. Mr Witness, you still don't get what I am getting at. In that store, and any one of these Rockford stores—

A. Oh, wait.

Mr. Dunau: Just listen to the question. Don't guess.

By Mr. Christensen:

Q. Did the total per cent change after 6 o'clock, or did they remain the same, if you know?

A. I don't know.

Mr. Dunau: That is the answer, you don't know.

1061 The Witness: I understand it now.

By Mr. Christensen:

Q. At the 1755 store, did you see any meat that was spoiled?

A. Yes, I did.

Q. What piece of meat did you see that was spoiled?

A. There was chop suey meat and this consists of veal and pork cut in small pieces which were completely unsalable and they were completely unprocessable, reprocess-  
able.

Q. How many packages?

A. I can guess that there were ten. That is all I can

do. I know that there was more than five, but I would say about ten.

Q. The entire display of the chop suey meat was spoiled?

A. No, there were some packages underneath that were fresh. In other words, you had top packages that were spoiled and there were some in the second row underneath that weren't.

Q. You didn't open any of these packages?

A. No, sir.

1062 Q. You could simply tell by looking at them through cellophane that they were spoiled?

A. Positively.

Q. And that was at 7:30 p.m., approximately?

A. Approximately that, yes.

Q. How long does it take a package of meat to spoil, of veal and pork?

A. That is undeterminable for a number of reasons. The first is you don't know when that piece of meat was killed. That is why in processing, sometimes a fellow can think something is fresh. He can get it from the packer today, you see. It looks fresh to him as he is cutting it, and still that packer may have had that particular item for up to ten and even fourteen days. I am not—I know that they could have it to the point where it is not completely fresh. I don't know how long they could hold it without taking a chance on shipping it out, you see. But that particular piece then could be processed and look in fairly good condition, be put out, and within—sometimes within an hour under cellophane then you can tell that that particular item is spoiled. But it takes—well,  
1063 you can't say a certain amount of time for any one particular cut of meat. I can't look at a package—

Q. Have you ever had an instance in your experience where a qualified journeyman member of your Union cut

and wrapped for prepackaging sale a piece of meat and it was immediately placed out on the counter and one hour later you determined it was spoiled meat?

A. I can't pinpoint a particular spot where that happened.

1064 Q. You never had that happen in your whole life, have you?

A. I can't say that, either.

Q. Did you form any judgment last night at 1755 Hammond as to how long that meat had been spoiled?

A. Not how long it had been spoiled. The only judgment I came to is I determined when it was cut up.

Q. You determined when it was cut up?

A. Yes.

Q. How did you determine when it was cut up?

A. Because I have seen the same meat—in other words, I know that if I cut chop suey meat on Friday or Saturday, by the next Tuesday it is turning the particular color that I observed that Tuesday, you see.

Q. You actually can't tell whether the meat is spoiled without opening the package and smelling it?

A. That is not true in all cases.

Q. That is not true in all cases?

A. Yes, sir. That is not true in all cases.

1065 Q. In your judgment, if you had looked at this meat at 6:00 P.M. instead of 7:30 P.M., would it have shown whatever condition it is you claim you observed at—

A. Yes. Yes, it would have. It would have shown it already that particular Tuesday morning, not as deeply as when I saw it at 7:30, but it would have been distinguishable as being on the verge, and practically spoiled then.

Q. Yesterday morning?

A. Correct.

Q. At 9:00 o'clock in the morning, or whenever the market manager looked at it?



A. That's correct.

Q. It would have been observable that those particular packages of chop suey meat should have been removed from sale all day long?

A. I don't know about all day, but for sure he should have seen it by 2:00 o'clock that afternoon. I can say that positively, for sure.

Q. All right. Is that the only meat you saw that 1066 was spoiled, was this chop suey meat?

A. No.

Q. What other meat?

A. Oh, there was spare ribs and that I am almost sure it was in that particular store that I saw the spare ribs, also.

Q. Well, think.

A. I couldn't say for sure. I know I saw spare ribs in one of the first two stores.

Q. Because you are making a very serious charge against members of your own Union?

A. It is in one of the first two stores.

Q. Which one was it?

A. It is not a serious charge because it happens to me, too, where I have to go down my counter and pull some of these things which change color on the spur of the moment.

Q. Well, the chop suey meat didn't change color on the spur of the moment; that was observable yesterday afternoon?

A. At that hour of the day.

1067 Q. What about the spare ribs?

A. I will tell you, when—actually, this is what happened—

Q. No, these spare ribs, which store did you see them in?

A. In either the first or the second.

Q. And you can't tell which one?

A. Right now, I can't say for sure.

Q. Did you make any notes as you came out of the stores—

A. No.

Q. (Continuing.) —to refresh your recollection so you could testify accurately?

A. No, I didn't.

Q. You are just giving us now what you saw in one store or the other or the third one last night?

A. That's right. Certain things stood out in my mind.

Q. It doesn't stand out in your mind—the spare ribs don't stand out clearly enough in your mind so you can tell us where you saw them?

1068 A. No, they don't.

Q. So that wasn't a very disturbing thing to you?

A. No, actually it wasn't. It was something that could happen to any market manager. Like I said, it happened to me. I have pulled stuff like that.

Q. It could happen with ten butchers on duty and it wouldn't be observed?

A. I didn't say that, either. If I am on duty and I spot that stuff, I will pull it out. I don't believe in hoping that some blind man will come along and pick it up.

Q. Have there been times when you discovered that things haven't been spotted for an hour or two?

A. Surely. Sometimes they are—

Q. All right.

A. Sometimes they are—

Q. You have answered it.

One more question, Mr. Witness: It is a fact, is it not, that you left Jewel because you became convinced in your own mind you were at the end of the road there; that

1069 there was no further promotion in store for you at Jewel?

A. That's not why I left Jewel.

Q. They didn't give you an opportunity to learn anything further that would have fitted you for a higher position?

A. That's correct.

Q. And you were convinced that they weren't going to do that, isn't that right?

A. I didn't see it coming, and I had set a specific time, you know, until I would wait. If it didn't happen by then, I would leave, and that time came and I left.

Q. And you were persuaded from such information that—

A. Pardon?

Q. You were persuaded that the Jewel organization felt that you weren't worthy of any further promotion, and you weren't going to get any further in Jewel than the spot you were in, isn't that right?

A. Well, that's never true, not with Jewel. I mean, I have seen—I have people at Jewel and I can name an instance where the fellow looked like he was out three years ago, and today he is a District Manager, so that is not true. I couldn't feel that way. I don't think I ever felt that way at Jewel.

Q. But you thought you had better make a switch to A&P under the circumstances, and you did?

A. Under what circumstances?

Q. Under the circumstances in which you found yourself, you voluntarily went and sought a position with A&P?

A. Yes.

1072

Thursday, November 8, 1962,  
10:00 o'clock, A.M.

Court convened pursuant to adjournment.

1077 EDWARD VORBECK, a witness called on behalf of the defendants, having been heretofore duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Dunau.*

Q. Mr. Vorbeck, if you at any time would like a recess say so, and I am sure the Court will accommodate you.

A. Thank you.

Q. Mr. Vorbeck, I want to show you Defendant Union's Exhibit 10, and you will observe the asterisk opposite some of the stores.

Do the asterisks denote Sunday operations?

A. I am afraid I cannot answer that. I cannot find any double asterisks on the exhibit.

1078 Oh, I am sorry. Yes, on the last page, "Any store open on Sunday," is indicated by an asterisk. The double asterisks do indicate the store is open on Sundays.

1080 Q. Mr. Vorbeck, let's talk about the 1959 negotiations. The employers received a written list of Union contract demands on July 9, 1959?

A. They did.

Q. Were those demands amended on July 21, 1959?

A. Yes, the Union submitted supplementary demands.

Q. Under date of June 4, 1959, were you informed by letter from Mr. Kelly of the Union's desire to open the contracts for negotiations?

A. Yes, sir.

Q. Mr. Vorbeck, I show you what has been marked 1081 as Defendant's Exhibit 34, a letter dated June 4, 1959, from Mr. Kelly, and I ask you whether that is a correct copy of the letter informing you of the Union's wish to open the contract for negotiations?

A. It is.

Q. And I show you what has been marked Defendant's Exhibit 35, and ask you whether these are the contract demands submitted by the Unions on July 9th, as amended on July 27th?

A. They are.

Mr. Dunau: I offer into evidence Defendant Union's Exhibits 34 and 35, your Honor.

Mr. Christensen: No objection.

1082 The Court: They are admitted.

(Said documents, so offered and received in evidence, were marked DEFENDANT UNION'S EXHIBITS NOS. 34 and 35.)

By Mr. Dunau:

Q. Were meetings thereafter held between the employer group and the Union group on the following dates in 1959.

On July 21st?

A. Yes.

Q. On August 18th?

A. Yes.

Q. On August 31st?

A. Yes.

Q. On September 9th?

A. Yes.

Q. On September 25th?

A. Yes.

Q. On November 2nd?

A. Yes.

1083 Q. On December 1st?

A. Yes.

Q. On December 2nd?

A. Yes.

Q. On December 3rd?

A. Yes.

Q. On December 4th?

A. Yes.

Q. On December 8th?

A. Yes.

Q. Was agreement reached on December 8th?

A. Yes, with the sole exception of Jewel.

Q. And the sole exception as to Jewel was reservation concerning night operations?

A. Yes. And also the inclusion of a new clause in it, the no strike, no lock-out clause.

Q. As it pertained to night operations?

A. Yes, that is correct.

Q. And not otherwise?

A. Not otherwise.

1084. Q. Now, at the meeting on August 18th, did the employer group select Mr. Richardson of Wieboldt's as a temporary chairman of that group?

Mr. Christensen: What meeting?

Mr. Dunau: August 18th.

By the Witness:

A. He was selected earlier than that. July 21st.

Q. And how long did he serve as chairman, sir?

A. I think just two meetings, July 21st and August 18th.

Q. On August 31st, was Mr. C. T. Van Ausdale, then of Piggly Wiggly, appointed chairman of the employer group?

A. Yes.

Q. Did he remain chairman of the employer group throughout the remainder of the 1959 negotiations?



A. He did.

Q. As the chairman of the employer group, did he state the position of all the employers unless a particular employer present at a meeting disclaimed that position?

A. Yes, sir.

1085 Q. Prior to the September 25th meeting now, did you prepare a list which you called, "Restrictions in the contracts and the practices of Chicago Meat Cutters Locals."

A. I did.

Q. Was that list distributed to the representatives of the union group at the meeting of September 25th?

A. Yes, sir.

Q. Was the first restriction stated on this list submitted on behalf of the employer group as follows:

"Restrictions on the hours when a market may be open"?

A. I haven't located the list of restrictions, but I am almost dead sure you are right.

(Document handed to witness.)

A. Yes, sir.

Q. Was this list distributed to the union group as a position common to all the employers?

1086 A. If you mean that all employers are asking that all the restrictions be listed, I don't think so. It was merely a list observing what restrictions were contained in the contract. Observing or pointing out would be better words.

Q. Was the objective of the distributing of this list to secure from the Unions agreement upon concessions concerning those restrictions?

A. Yes, sir. They were hopeful that the Union would lift, at least some of them.

Q. And was the hope a position which was common among all the employers?

A. Yes, with varying weight/as to which restrictions that each wanted lifted.

1087 Q. Mr. Vorbeck, I show you Defendant's Exhibit 36 entitled, "Twelve restrictions in the contracts and practices of Chicago Meat Cutters Locals," and ask you whether that is the list that you prepared and was distributed to the union group?

A. It is.

Mr. Dunau: I offer that in evidence.

Mr. Christensen: Well, if it please the Court, I have no desire to keep anything out that is relevant, but here is a study made by Mr. Vorbeck of many matters going to the operation of a meat market, various restrictions upon the way you operate it.

I don't understand the materiality. It is a study that was presented, it was given to the Union. I don't see how it bears pro or con upon the issue before the Court.

Mr. Dunau: Well, certainly, the first—it bears directly upon the issue before the Court, and the rest bears in that they are all interrelated objectives which it was the  
1088 hope of the employer group to secure some relief from in the course of negotiations including the first.

Mr. Christensen: Well, now, you have no such testimony.

Mr. Dunau: I believe we have that testimony from Mr. Vorbeck at this moment.

Mr. Christensen: He said that they were all interested in it, this one to that and the other thing. This was not presented as any official demand by anybody under your own testimony. Now, I don't know where it gets us.

The Court: Well, these were suggestions—

Mr. Christensen: Of Vorbeck.

The Court: (Continuing.) —of Vorbeck prior to the execution of the contract.

Mr. Christensen: Yes.

The Court: But leading up to it. Well, the reiteration of what they are speaking of so far as restrictions as 1089 to marketing hours—

Mr. Christensen: Yes.

The Court: (Continuing.) —would be one. As to the materiality of the balance, I don't know.

However, I don't see any harm in letting it—the Court will admit it in evidence.

(Whereupon said document marked DEFENDANT UNION'S EXHIBIT 36, was admitted into evidence.)

1090 By Mr. Dunau:

Q. At the December 1st meeting, Mr. Vorbeck, did Mr. Kelly state that he was willing to discuss market-operating hours and to bargain on that subject?

A. Yes, sir.

Q. At the December 2nd meeting, did the employer group, through its Chairman, Mr. Van Ausdall—how do you pronounce that?

A. Van Ausdall.

Q. (Continuing.) —Van Ausdall submit a proposal to the Union covering all subjects upon which agreement would be necessary, including, as Item 9, the elimination of all restrictions on market-operating hours?

A. Yes, sir, he did.

Q. Did that proposal also include a provision for a completely flexible work day?

1091 A. Yes, sir, effective, I believe, the second year of the contract.

Q. Did Mr. Kelly respond that he was willing to bargain on the subject of marketing-operating hours?

A. Yes, his response at 2:15 that afternoon was that the Union was willing to bargain with reference to the market-operating hours.

By Mr. Dunan:

Q. At the December 3rd meeting did the employer group make another proposal to the Union group?

A. Yes.

Q. Did Item 11 of that proposal call for the removal of all restrictions on market-operating hours?

A. Yes, sir.

Q. On December 4th, did the employer group make a proposal to the Union group which contained no 1092 request to remove market-operating hours restriction?

A. Yes, sir.

Q. Did the Union respond to that proposal with a 10-point offer of its own?

A. They did.

1093 Q. Did Mr. Kelly, as part of this 10-point response, state that he was willing to bargain on the subject of market-operating hours?

A. Yes, he attended to a statement on ten points, five footnotes, and Note C of his notes:

"Was willing to bargain on market-operating hours."

Mr. Christensen: Well, may I again—is that a "C" you put on, or was it a footnote to—a footnote to me denotes a written document.

The Court: That is a note you made?

The Witness: This is the way Mr. Kelly outlined it, Notes A, B, C, D, and, I believe, E.

Mr. Christensen: These were oral—

The Witness: I wrote it down the way he gave 1094 it.

Mr. Christensen: These were oral notes, oral footnotes, then?

The Witness: Yes, sir.

Mr. Christensen: All right.

By Mr. Dunau:

Q. Now, Mr. Vorbeck, did the 1957 agreement contain this provision:

"Eight hours shall constitute the basic work day. Work shall begin at 9:00 A.M. and shall cease at 6:00 P.M."?

Mr. Christensen: Don't we have that agreement in evidence?

Mr. Dunau: Yes.

Mr. Christensen: Well, I suggest you show it to the witness and not ask him to remember it by heart.

1095 Mr. Dunau: In evidence as Plaintiff's Exhibit 5 is the 1957 agreement, Section 1 of which states:

"Eight hours shall constitute the basic work day. Work began at 9 A.M.,—"

Mr. Christensen: Section 1 of what?

Mr. Dunau: Section 1 of Article 4.

"Work shall begin at 9 A.M., and shall cease at 6 P.M."

By Mr. Dunau:

Q. In 1958, in the 1958 agreement in evidence as Plaintiff's Exhibit 7, Article 4, Section 1 states:

"Eight hours shall constitute the basic work day, which shall be scheduled to begin no earlier than 8 A.M. and to end no later than 6 P.M."

Mr. Vorbeck, what was the consequence of the change from the starting time from 9 A.M., to 8 A.M.?

A. It gave us one more hour in which we could schedule the work day.

1096 Q. In the 1957 agreement, could you call an employee in earlier than 9 A. M.?

A. No, I don't think so.

Q. You could call him in if you were willing to pay time and a half for the hour, is that correct?

A. That is correct.

Q. And the consequence of the 1959 change is that you could call him in during that same hour, but you did not have to pay him time and a half, is that correct?

A. Yes. I think the overtime provisions would tell us exactly.

Q. The consequence then was the concession by the Union between the hours of 8 and 9 A. M., is that it?

A. I don't know what the concession was but—yes, you might say that.

Q. And was this an agreement which granted the employer group a limited flexible work day?

A. Yes, sir.

Q. Let's go to 1961 negotiation, Mr. Vorbeck:

Did the Union group, in 1961, present its contract demands to the Employer group on July 27, 1961?

1097 A. Yes, sir.

Q. I show you what has been marked as Defendant Union's Exhibit 37, and ask you whether those are the contract demands submitted by the Union group to the Employer group on July 27, 1961?

Mr. Christensen: I am going to object to this question. I fail to see the relevancy of it to this issue.

The Court: What is the materiality of it?

Mr. Dunau: We are charged, your Honor, with a conspiracy and restraint of trade in combination with  
1098 Association Food Dealers, Incorporated.

Mr. Christensen: And others.

Mr. Dunau: And no others in that complaint.



Mr. Christensen: And others.

Mr. Dunau: There are no others in that complaint and the complaint will speak for itself.

Mr. Christensen: Read it.

Mr. Dunau: I have read it many times.

One purpose of this exhibit, and of going through the 1961 negotiations as we went through the 1957 and 1959, is to show not in combination with any employer group, but legitimate, arms-length collective bargaining at which the Union had certain objectives, the Employer group had certain objectives and they bargained to the best of their ability to reach accord on these issues.

The Court: I think it should be received. Overruled. Admitted.

1099 (Said document marked DEFENDANT UNION'S EXHIBIT 37, was admitted into evidence.)

By Mr. Dunau:

Q. Did a negotiating meeting take place on August 22, 1961, between the Employer group and the Union group?

A. Yes, sir.

Q. On the day preceding that meeting, on August 21st, was there a meeting of the Employer group alone?

A. There was.

Q. Were you selected as the permanent chairman for the Employer group for the course of the 1961 negotiations?

A. I was.

Q. Was a steering committee selected to guide and assist you?

A. Yes, sir.

Q. Would you state what persons were on this steering committee?

A. My notes for the 21st show that the committee  
1100 was made up of alternatives, Joseph Quirk or Bob Cone of Jewel Tea, constituted one member with an

alternate. E. S. Stern represented High-Low or A. K. Shell represented Hillman's, the second members.

Q. Would you slow it down on the names so that the Reporter could get it, please?

A. C. H. Bromann, or Ed Shear representing the Associated Food Retailers of Greater Chicago.

I believe it is Morris Geifman, G-e-i-f-m-a-n, of Eagle United. His alternate was W. R. Bedell of Kroger.

From my own company, myself and Mr. Brewer, who was my alternate.

From A & P, Adolph Ernst with Bert Collins as his alternate. That's all.

Q. Thank you.

Now, in the course of the 1961 negotiations, did you state the position of the entire Employer group unless a particular employer representative present at a meeting disclaimed that position?

A. That's correct, or unless he was not present.

1101 Q. Or unless he was not present at the meeting?

A. Yes, sir.

Q. At the meeting on August 21st, among the employer group alone, were you requested to work up a list of what the Union—of what the employer group regarded as restrictions on the contract?

A. I don't know whether I was requested, or whether I just worked them up.

Q. Do you find anything on that in your notes, sir?

A. No, sir.

Q. Let me read to you from Pages 188 to 189 of your deposition:

“Q. —

Mr. Christensen: What page, counsel?

Mr. Dunau: 188 to 189, pertaining to the meeting among the employer group on August 21st.

By Mr. Dunau:

Q. (Reading.):

"Q. Was there any discussion of the subject of market-operating hours?"

"A. I note no comments on my notes. I don't  
1102 have any recollection that we did discuss it particularly, except that I was once again requested to work up list of restrictions in the contract which I did, and I find copies of those restrictions in this file revised as of August 21, 1961."

Isn't that correct, sir?

A. I think my testimony at that time was correct, so I must have done it pursuant to request.

Q. Did that list again contain an objection to the market-operating hours' provision?

A. Yes, sir.

Q. Was a meeting held between the employer group and the Union group on September 12, 1961?

A. Yes, sir.

Q. Before the meeting on September 12th, was there a meeting among the employer group itself, either on September 12th or sometime before then?

A. I have no notes of any meeting. There might have been prior to the Union coming in.

Q. Do you recall a meeting among the employer  
1103 group before you met with the Union group on September 12th?

A. I cannot be exact as to the date.

There was another meeting of August 21st, I do recall. There were at least probably two meetings, and during that period of time I drafted a contract which was substantially revised.

Now whether it occurred prior to September 12th, I am not at all clear.

Q. Well, you did draft a contract. is that correct?

A. Yes, sir.

Q. A contract proposal, that is?

A. A contract proposal.

Q. And that contract proposal was submitted to the Union group on September 12th, is that correct?

A. Yes, sir.

Q. And before it was submitted to the Union group it was discussed at a meeting of the employer group, is that correct?

A. Yes, sir.

1104 Q. Was it composed of the steering committee that had been selected?

A. Yes, sir. I won't say that all members of the steering committee were present, but I think that five or six were present.

Q. Do you recall who was there, sir?

A. Partially.

1105 Q. Tell us who you recall being present?

A. Joseph Quirk of National Tea; Adolph Ernst of A&P; I was there, of course, and I think Mr. Brewer of our company was there.

I believe the Kroger Company had one representative, probably Mr. Bedell.

I don't know whether Mr. Bromann was present at that meeting, but he did see the contract draft prior to its going in.

Beyond that, I don't recall who was present.

Q. All right.

Now, among those who were present, was the contract draft gone over?

A. Yes, sir.

Q. What was done with respect to it by those that went over it?

A. Quite a few changes were made.

Q. Was it put in a form that was satisfactory to the group for presentation to the Union group?

A. Yes, sir.

Q. And Mr. Bromann saw it in that form, is that correct?

1106 A. He may have contributed to the form. I don't recall exactly.

Q. He may then have participated in the discussion, is that correct?

A. Yes, sir.

Q. Was this contract proposal submitted by the employer group to the Union group on September 12, 1961?

A. Yes, sir.

Q. Please state who was present on behalf of the employer group on that date.

A. I don't have a single note on that.

My first quite complete notes on who were present starts with the September 29th meeting, at which time the Union had circulated a list. I should have had notes, but as Chairman, I was not taking care of the clerical duties, so I don't recall who was present.

Q. Was Mr. Bromann present?

A. I don't recall. I assume he was, but I don't know.

1107 Q. Did Mr. Bromann—

Mr. Christensen: Wait a minute. I move to strike out the assumption.

The Court: Sustained.

By Mr. Dunau:

Q. Did Mr. Bromann concur in the presentation of the employer contract proposal to the Union group?

A. Yes.

Q. And was it presented to the Union group on September 12, 1961?

A. Yes, sir.

1108 By Mr. Dunau:

Q. I show you what has been marked as Defendant Union's Exhibit 38, which has a date of September 11, 1961, at the left-hand margin, and ask whether that is the contract proposal which was submitted by the employer group to the union group on September 12th?

A. It is.

1109 Mr. Dunau: I offer that in evidence, your Honor.

The Court: Any objection?

Mr. Christensen: No.

The Court: Admitted.

(Whereupon said document marked as DEFENDANT UNION'S EXHIBIT 38, was admitted into evidence.)

By Mr. Dunau:

Q. Did Defendant Union's Exhibit 38, the contract proposal submitted to the Union group on September 12th, contain any provision pertaining to market opening hours?

By the Witness:

A. No, sir.

Q. Was the consequence of the omission of any provision pertaining to market opening hours to leave that subject to the discretion of the employer?

A. Yes, sir.

Q. Did Mr. Kelly on September 12th, state that he  
1110 was not closing the door to negotiations on market opening hours?

A. Yes, sir.

Q. Were meetings thereafter held in 1961 on the following date: September 20th?

A. Yes, sir.

Q. September 28th?



A. Yes, sir.

Q. September 29th?

A. Yes, sir.

Q. October 4th?

A. Right.

Q. October 13th?

A. Yes, sir.

Q. November 1st?

A. Yes, sir.

Q. At the meeting on September 29th, did Mr. Kelly ask the Employer group for a breakdown of its demands?

Mr. Christensen: Which meeting, counsel?

Mr. Dunau: September 29th.

By the Witness:

A. I have no note to that effect.

1111 By Mr. Dunau:

Q. You don't recall whether he asked for such a breakdown independently of a note?

A. No, sir. I have—

Q. Just answer that question. You don't recall?

A. No, sir.

Q. On October 17, 1961, Mr. Vorbeck, did you make a report to Mr. Hargrave on the negotiations?

A. Yes, sir.

Q. Did that report include a statement concerning market opening hours?

A. Yes, sir.

Q. Please read what you reported to Mr. Hargrave on that subject on October 17th?

Mr. Christensen: I ask that the witness be permitted to read the entire relevant portion.

Mr. Dunau: Exactly, sir.

By the Witness:

A. With reference to night marketing hours, the report reads as follows:

1112 "The sub-division in the industry likewise shows up with respect to night operations. Here we are not encountering any opposition from the Associated Food Retailers whose representative has officially, possibly for the purpose of the litigation, stated that his membership were interested in three nights of operation, Mondays, Thursdays, and Fridays. On the other hand, the other major chains seem opposed to any discussion of the basis on which night operations can be had, although they joined with Kelly in stating their willingness to discuss night operations. For example, when I submitted a journeyman on duty contract provision, similar to that which we have in Local 350, Gary-Hammond, which has produced a lower wage cost for us than a more onerous requirement in our Joliet contract, the industry refused to permit me to offer it as an industry proposal."

1113 Q. Do you have a further reference in that memorandum on the subject, sir, on the last page, sir?

A. Yes, sir.

Q. Please read that.

A. "The principal demands which employers are seeking are: One, a new classification of meat clerks, preferably female, who will not progress into the journeyman classification; two, the redefinition of a jurisdiction clause to restrict the Union's jurisdiction to processing of fresh meats 'and such other processing of such other meat as the employer may assign' to the Union. We have eliminated the Union's jurisdiction over sale. Incidentally, George Christensen, of our attorneys, is very interested in our draft of jurisdictional provision, particularly the elimination of the

Union's jurisdiction over sale. He points out that the sale is never made in the meat department, that it is made only at the check-out desk when a customer hands over the money for her purchases. Three, greater flexibility in scheduling the work day which is now limited to 8 A. M., to 6 P. M. Four, complete removal from the contract of all restrictions on market operating hours. Five, elimination of automatic retroactivity of wage increases for ninety days following the contract expiration."

1115 Q. Now, I believe you testified that a meeting between the employer group and the Union group was held on November 1st, correct?

A. In '61?

Q. 1961, yes.

A. November 4th. I have none on November 1st.

Q. Do you have a notation that you had a meeting on October 13th?

A. Yes, sir.

Oh, I am sorry. I was looking at October 4th here. November 1st is correct.

Q. Now, prior to the meeting on November 1st, was there a meeting among the employers?

A. There was a sub-committee meeting back on October 25th with a sub-committee of the Union.

Q. No, I am talking about a meeting of the employer group alone, sir.

Mr. Christensen: On November 1st?

Mr. Dunau: Yes, either on November 1st or on a day preceding November 1st.

By the Witness:

A. I find no notes on such a meeting. I think there was one that morning, because the Union didn't come in until 2:20 in the afternoon.

Q. What was discussed at that meeting in the morning of November 1st?

A. I haven't got a single note on it.

Q. Do you recall independently of any notes?

A. No, sir.

Q. Let me read to you from your deposition on Pages 201 to 202:

"Q. All right.. When was the next meeting between the employer group and the local Unions?

"A. November 1, 1961.

"Q. Had there been a prior meeting amongst the employer representatives?

"A. Not prior, but there must have been a meeting of the employer representatives only in the morning. I notice I have the notation that the Union came over at 2:20 in the afternoon.

"Q. During the morning was there a discussion 1117 of market-operating hours amongst representatives of the employer group?

"A. I have no notations as to what we discussed. I do know that we were divided in our approach on health and welfare, as we were throughout the negotiations.

"Our meeting on that date with the Union was very short, from 2:30 to 3:10, and the employers continued from 3:10 to 3:50, and my only notation is that we were trying to find a common ground on health and welfare and market-operating hours.

"Q. Now, did your notation of attempting to find a common ground—a common meeting ground on the subject of market-operating hours pertain to discussions among employer representatives?

"A. Yes."

Is that an accurate statement of what transpired?

A. That is accurate.

1118 Mr. Christensen: Please, please. I suggest you complete—

Mr. Dunau: If there is anything else you want me to read, I will be perfectly happy to.

Mr. Christensen: Yes, continue, please.

Mr. Dunau (Reading):

“Q. Do you recall what that discussion was?

“A. No, sir.”

Is there anything further you want me to read?

Mr. Christensen: No.

By Mr. Dunau:

Q. Does that accurately state what transpired on November 1st, sir?

A. Yes, sir. To the best of my recollection, sir.

1121

Wednesday, November 28, 1962,  
10:00 o'clock, A.M.

Court convened pursuant to adjournment.

1126 EDWARD VORBECK, having been previously duly sworn, resumed the stand and testified further as follows:

*Direct Examination by Mr. Dunau (Continued).*

Q. Mr. Vorbeck, was a meeting held between the employer group and the union group—

Q. Was a meeting held between the employer group and the union group on November 2, 1961?

A. Yes, sir.

1127 Q. On that day, did you propound a hypothetical question to the union group on the subject of market-operating hours?

A. Yes, sir.

Q. Did you propound this question on behalf of the entire employer group?

A. Yes, sir.

Q. Would you please state what that question was?

A. I asked Mr. Kelly to make the following three assumptions:

1)... That all provisions of the contract, namely, wages, health and welfare, vacations, et cetera had been settled;

2). That the industry reached agreement to limit the sale of fresh meat to three nights a week, Monday, Thursday and Friday, and that no Sundays and—that's 2, and that,

3). Jewel offers to drop its suit without prejudice and agrees not to reinstitute it during the term of the contract if the industry offer of night operations is accepted.

1128 Then I asked under what conditions will the union be willing to recommend that the hours when fresh meat may be sold, be extended to Mondays, Thursdays and Fridays to 9:00 P.M.

Q. Mr. Vorbeck, when you stated as the first assumption that all provisions of the contract, wages, health and welfare, vacations, et cetera have been accepted, did you state all provisions had been settled except market-operating hours?

A. Well, that was the intent.

Q. Now, did the union, after you propounded this question, take a thirty-five minute recess?

A. Yes, sir.



Q. Did Mr. Kelly return and respond to the hypothetical question that had been put by you?

A. Yes, he did.

Q. What did he state?

A. One, the assumptions are loaded; two, to negotiate night hours on the limited basis of three nights a week is unrealistic and would be conspiring with a group of employers to limit operations to certain nights and 1129 certain hours; three, the union is willing to negotiate for seven days each week and twenty hours per day of operation; and, if all employers as a group, present such a demand, the union would react with a demand covering such requests; four, the above premise of the assumptions tendered by the employers.

Q. At that time, did the union group leave the meeting?

A. Yes.

Q. Was a discussion then held among the employer group?

A. Yes, sir.

Q. Please state what that discussion was?

A. Well, No. 1, summary by Mr. Stern of Hi-Low to the effect that Mr. Kelly's position amounts to this:

That any restriction on night-operating hours is illegal; and the second thing I remember is we still didn't know where we were, and as a result, we sent a sub-committee out to explore it.

1130 Q. When you say you sent a sub-committee out to explore it, who was on that sub-committee?

A. From the employers, Joseph Porte of National Tea and Adolph Ernst of A&P.

Q. And did these two people then meet with the union group?

A. With a sub-committee from the union group, Mr. Kelly, Mr. Neilubowski, and Mark Allen.

Q. Were you present at this sub-committee meeting?

A. No, sir.

Q. Did the employer representatives report the discussion that was held at that meeting to you?

A. Yes, they did.

Q. What did they state?

A. Well, I can only state their summary. Their summary was that the union's response was—they were not favorable to night—excuse me just a second.

They were not favorable to nights under any circumstances, Point 1; 2, the demand for nights will have to come from the entire industry and must provide 1131 for seven days and nights of operations; in other words, must not include any limitation as to hours; and, 3, if such a demand of received, the price will be stiff.

Q. Was a meeting held of the employer group and the union group on November 3, 1961?

A. Yes, sir.

1132 Q. Did the employer group on that day make your proposal which did not contain any modification of the existing provision pertaining to market operating hours?

A. They did.

Q. Was another meeting of the employer group and the union group held on November 13, 1961?

A. Yes, sir.

Q. Was there a meeting of the employer group alone on that date?

A. Late in the afternoon there was.

Q. At that meeting—

A. (Continuing.) There was, too, you might say during various periods of recess during the day, but not much took place.

Q. All right, now, at the meeting of the employer group did you inform the employer group that Jewel planned to make a proposal on behalf of itself on the subject of market operating hours?

A. On November 13th? I certainly did.

Q. Did you tell the employer group that any employer was free to join that offer with you?

1133 A. Yes, sir.

Q. Did you distribute the offer that you proposed to make to the union group to the employers?

A. Yes, sir.

Q. I show you what is Plaintiff's Exhibit 10, and ask you whether that is the paper which you distributed to the employer group at that time?

A. Yes, sir, this is it.

Q. Did any employer on that date join with you in this proposal?

A. No, sir.

Q. Did you make this offer to the union group on that date?

A. No, sir, we did not.

Q. Why not?

A. That particular session was a rather stormy session. Matters that had been explored on the deposition of Mr. Kelly were brought forth, and I, as chairman of the union — of the employer group was criticized by both members of the union and by certain employers.

Mr. Christensen: May I interrupt, Mr. Dunau?  
1134 You say his deposition. You mean a deposition he had shortly before that given in this case?

The Witness: Yes, November 6th, to be exact.

By the Witness:

A. (Continuing.) —and it just didn't seem timely to present it to the union. We were having enough trouble on another major issue, which was health and welfare.

By Mr. Dunau:

Q. Well, is it fair to say that the trouble on the other issue pertaining to health and welfare induced you to refrain from making this proposal at this time?

A. Not alone, no. I just didn't—

Q. Was it a substantial part of the reason why you did not make the proposal on the subject of market operating hours at that time?

A. It was undoubtedly a factor, but I still wanted the union in a more receptive mood of mind than they obviously were at the moment.

1135 Q. As I understand it, you refrained from making this proposal to the union group at that time because you did not think they were then in a receptive frame of mind?

A. That's very true.

Q. Now, on November 16, 1961, was another meeting held between the employer group and the union group?

A. Yes, sir. This was our final meeting as far as negotiations were concerned.

Q. That is, this was the final meeting of the 1961 negotiations?

A. Right.

Q. Between November 13th and November 16th had you been informed by any employer that that employer was joining with Jewel in its proposal on market-operating hours?

A. No, sir.

Q. On that day was a proposal made by the employer group—

1136 Q. (Continuing) —looking toward settlement of all the issues which were in dispute in the negotiations?

A. Yes, sir.

Q. Did that proposal retain the market-operating hours provision as it had existed until then?

A. Yes, sir.

Q. Did Jewel Tea agree with that proposal except for health and welfare and market-operating hours?

A. Yes, sir.

Q. What was the basis for Jewel's disagreement on the subject of health and welfare?

A. No, I believe that Jewel was still with the industry on health and welfare at that point. That was made about 2:30 in the afternoon.

Q. Well, at that point, Mr. Vorbeck, had the 1137 employers agreed that there would be no contribution by the employees to a health and welfare fund which would be set up on a joint employer-union basis?

A. No, not at that point. We were still holding out for our plans. I think our company particularly was holding out for a plan on a contributory basis.

Q. All right, let's take it, then, as the position on health and welfare as it was finally evolved on November 16, 1961.

What was the employer group's position on that subject?

A. Jewel alone accepted. We agreed to pay into a jointly administered health and welfare trust fund the sum of \$21 for a full time employee per month, or to maintain our own health and welfare program on a cost-free basis, except as to optional life insurance, whichever the majority of our own people would decide, the majority of our eligible employees would decide, which means the full-timers.

At that point I did not have authority from our company to agree to provide our plan cost-free so I had 1138 to except from that also.

Later on we did join the industry. That was subsequent to this meeting.

Q. But at this point, as I understand it, there was a proposal for either, 1, a jointly-administered health and



welfare plan, or, 2, an individual company plan, is that correct?

A. Yes, sir.

Q. And the employees of each employer would then further decide whether they wanted to participate in the jointly-administered fund or in the individual plan of the employer?

A. That is correct.

Q. And at this point you still had no authority to agree on behalf of your company to either plan which would be cost-free to the employees?

A. I could agree on the industry plan if our people so voted. I mean, the jointly-administered plan.

But I couldn't agree on the provision of our own plan cost-free.

Q. In other words, the point at which you still 1139 had no authority to agree was that if Jewel's employees were to vote to remain with the Jewel plan, you had at that point no authority to say that the Jewel plan would be cost-free to your employees?

A. That is correct.

Q. This was the basis of Jewel's disagreement with the industry proposal on that date, is that correct?

A. That is one basis. The other one was night operation.

1140 Q. The other one was night operations?

A. Yes.

Q. Mr. Vorbeck, I show you what has been marked Defendant Unions' Exhibit 39 for identification,

"Memorandum of settlement agreement reached November 16, 1961."

Do you recognize that, sir?

A. Yes, sir. It is one I drew up.

Q. And did that reflect the agreement reached on that



date between the employer group and the union group, except for Jewel Tea on the two subjects which you have identified, Health and Welfare and Market Operating Hours?

A. Yes. It even sets out our disagreement with it in Point 14. This is correct.

1141 Mr. Dunau: I offer Defendant Unions' Exhibit 39 into evidence.

Mr. Christensen: No objection.

The Court: It is admitted.

(Said document which was marked DEFENDANT UNIONS' EXHIBIT 39, was received into evidence.)

By Mr. Dunau:

Q. Now, on November 16, 1961, did you present to Mr. Kelly Jewel's proposal on market operating hours?

A. I did.

Q. And is that the proposal which you had previously distributed to the employer group?

A. Yes, sir.

Q. Did you ask Mr. Kelly to present this proposal to his members at the—to the members of all the defendant local unions—at the contract ratification meeting which was to be held between all the members?

A. Yes, sir.

Q. Did you ask him to submit it with a favorable recommendation?

1142 A. Yes, I am sure I did, because without it it wouldn't go through.

Q. Did you also ask him to submit it even without a favorable recommendation?

A. Yes. I would like it to go through, regardless.

Q. You wanted it submitted to the membership either with or without a favorable recommendation?

A. Preferably with, but in any way.

Q. Did Mr. Kelly agree to submit this to the membership?

A. I don't recall any exact discussion from Mr. Kelly. I know that he did present it, or he so reported to me.

Q. He didn't disagree with you when you asked him to present it?

A. This was at the conclusion of a very long, harassing day and we were breaking up at the time that was given. It was done with the knowledge of everyone, that I was going to do it. But that's about all there was to it.

Q. Now was a—were ratification meetings held on November 26th, among the members of the defendant 1143 unions?

A. So reported to us by Mr. Kelly.

Q. On November 27th, did Mr. Kelly report to you concerning the vote that the members had taken on the Jewel proposal?

A. I'm not sure whether he did or who did, but I knew it, because I wrote a memorandum a short time later summarizing the settlement.

Q. What did you know on November 27th?

A. I am almost sure he must have called me. But one of my own men was there, because he is a journeyman meat cutter. He has a card. He had a right to vote.

Q. What did you learn happened at the meeting?

A. Both proposals submitted by Jewel with respect to night operations were rejected.

1144 Q. By the members?

A. Yes, sir.

Q. On January 2, 1962, did you make a telephone call to Mr. Kelly?

A. I have no notation that I did, but I do have a notation that as of that date we had agreed to accept the language agreed upon between the union and the balance of the industry. So I must have called him.

Q. Then, on that date, you informed Mr. Kelly that the Jewel was going along with the agreement which had been reached by the employer group and the union group?

A. Yes. I am sure it was subject to our usual standing objection.

Q. But at that time you acquiesced for example, in the Health and Welfare agreement, which had been made by the employer group and the union group?

A. Yes, sir.

Q. And the agreement that you entered into in 1961, contained the provision pertaining to market operating hours, did it not?

A. As I recall, it made no change of substance.

1145 Q. And you entered into the agreement containing that provision?

A. We did.

Q. Now, as I understand it, Mr. Vorbeck, in the Chicago area the grocery departments of Jewel Tea are open to 9:00 P. M., some of them, one day a week, some two days a week, some five days a week and some grocery departments are not open at all at night, is that approximately the situation?

A. Very few are not open at all. There might be five or six. The rest of your statement is correct.

1146 Q. Who—

A. The rest of your statement is correct.

Q. Now, who decides for Jewel Tea whether a particular store, the grocery department in that store, shall be open one night, two nights, more than two nights, or no nights at all?

A. The executives of the Operating Division, both of whom have testified in this case, Mr. Brewer of the meat side, and Mr. Woerthwein for the grocery side.

Q. Do they decide which stores shall remain open?

A. They don't decide it alone. They have the recom-

recommendation of the grocery manager, I am pretty sure, and the district—or the divisional manager now.

Q. Now, is it the grocery manager's recommendation which is the predominating reason in determining whether the store will be open or not open?

A. I don't know that. I am not a party to the procedures involved, and I take no part in the discussions; so

I do not know which is the predominating decision 1147 or recommendation.

Q. Mr. Vorbeck, in your deposition, at Page—

Mr. Christensen: May I have the page, Bernie?

Mr. Dunau: Yes, 125 to 126, where the following question and answer appear:

“Q. Would the company have records from which it could ascertain with some exactness what the situation was in 1957?

“A. I would question that they would on that particular issue. It is not of permanent importance to the company, and I have to have an up-to-date survey made even today to find out how many are open, and usually they have to send out to the stores to find out because the individual store managers along with their divisional supervision are given quite a bit of discretion as to whether they will be open at night or not.”

Now, is it accurate that the individual store manager, along with divisional supervision, is given quite a bit of discretion as to whether the individual store will be open or not?

A. He could never act without the approval of the divisional manager, so it is the divisional manager with whom the authority rests. The grocery manager has the right and his recommendation is undoubtedly given weight. You can't say that just he has the final discretion, because I don't think he has.

Q. But the two together?

A. Yes, subject—it is all subject, again, to review by Mr. Woerthwein.

Q. But if the two together were to decide that the store were to remain open, that is the effective decision, is it not?

1149 By the Witness:

A. I would say it is the effective decision until reversed.

By Mr. Dunau:

Q. And is it reversed usually?

A. Based upon operating conditions, it may be cut down. If they find out that five nights aren't desirable, aren't profitable, they will cut it back to two, three, whatever is desirable.

Q. Mr. Vorbeck, is it accurate to state that in general, all stores in a competitive area operate the same number of hours?

A. I don't think I am qualified to answer that.

Q. Did you make such an answer in your deposition?

A. I probably did. It is just my own supposition to what I think would be the condition.

Q. At Page 133 of your deposition, the following question and answer appears:

“Q. In general, is it true that all stores in a competitive area operate the same number of hours?”

“A. As a general rule, it is true, but it is subject to exceptions. If a shopping center doesn't open until noon, a meat market normally will not open until noon though it is permitted to do so.”

Is that answer your best judgment and information on the subject?

A. That is still correct.

1151 Q. The answer is still—

A. To my best judgment.



Q. Is it accurate to state that with only a few exceptions, in those stores where meat departments, those stores of Jewel where meat departments are open after 6:00 P.M., meat cutters are on duty?

1152 A. You have a variation by area. Our Will County stores are required by contract to have a journeyman on duty, so we have one on duty.

1153 By Mr. Dunau:

Q. Just answer the question at the moment, Mr.—

A. I can't give you a flat answer.

Mr. Christensen: I object to lecturing the witness. May he be permitted to continue with his answer and not be interrupted by counsel.

The Court: Have you completed your answer?

The Witness: If I may continue?

The Court: You may.

The Witness: In Gary-Hammond, we know that on two nights a week they do have and they may have on additional nights when the demand is there, but they don't always.

In the Kenosha stores and Crystal Lake, I think we are only open one night a week in Crystal Lake, and we have a man on duty there.

I don't know about Michigan City or Benton Harbor, but for the most part we are required to have someone on duty by union contract. I think the only exception is Gary-Hammond.

1155 By Mr. Dunau:

Q. Mr. Vorbeck, at Page 134, you again give this question and answer in your deposition:

"Q. Now, in those stores where meat departments are operated after 6:00 P.M., are meat cutters on duty?

"A. With only a few exceptions, yes, and let me illustrate.



1156 "In Lake County, Indiana, we are required to have a meat cutter on duty only on Thursdays and Fridays. We are usually open five nights a week. We usually have a meat cutter on duty on Monday and Tuesdays, in addition to Thursdays and Fridays.

"Wednesday is a pretty light night, and some of our markets will not have a meat cutter on duty on those nights."

Is that an accurate answer?

A. It was my answer. Whether it was accurate or not, I don't know.

Q. Was it an accurate answer as far as you know?

A. Well, yes, but I have never been out there at night.

Q. Did you make this question and answer which also appear on Page 134, Mr. Vorbeck:

"Q. Barring exceptions like that which you have just mentioned, is it generally true that a meat cutter is on duty when the meat department is operated?

1157 "A. If there is the volume or the contract requires it, a meat cutter will be on duty."

Is that an accurate answer?

A. I think it is reasonably accurate, yes.

Q. Is it always accurate to state that when a meat cutter is not on duty in the meat department and it is open after 6:00 P.M., business is light?

A. Yes, sir.

1158 Q. Now, in 1957, in the course of the negotiations during that year, did the proposals made for the operation of a meat department after 6:00 P.M., pertain to both service markets and self-service markets?

A. I believe they pertained to both, but my memory is a little hazy.

My best recollection at this point, without going through all my 1957 notes, is that they did pertain to both.

Q. Now is it accurate to state that in the 1959 pro-

posals, the proposals made with the operation of a meat department after 6:00 P.M., pertain to both service departments and self-service departments?

A. Yes, sir.

Q. Your answer was, "Yes, sir"?

A. Yes.

Q. In the 1961 negotiations, except for the proposal which Jewel Tea made on its own behalf, did all proposals which were made for the operation of a meat department after 6:00 P.M., pertain to both service and self-service meat departments?

1159 A. They did.

Q. Are there customers that prefer to do their shopping in a service market?

A. I would assume, yes.

Q. Why?

A. The personal attention of the butcher enables them to get a specific cut that they like, the specific amount of weight, particularly if the selection in the counter is not sufficiently large and possibly the cut isn't even displayed. He can then go get it for them.

Q. Is custom cutting in a self-service meat department designed to provide this kind of personal service which is available in a service meat department?

A. Yes, sir.

Q. Mr. Vorbeck, as you note Section 4.4 of the current agreements provide that:

"At the employers' discretion overtime at overtime rates may be worked after eight hours in any one day and behind locked doors after 6:00 P.M."

1160 What are the reasons that an employee would be asked to work after 6:00 P.M., a meat cutter?

A. To cut meat for the next day and to clean up.

Q. Is this a usual circumstance, this working after 6:00 P.M.?

A. No, I would say it is not, only when they have a heavy day coming up such as the days preceding Thanksgiving and Christmas.

Q. Is it accurate to state that it is relatively rare for a meat cutter to work after 6:00 P.M.?

A. To the limits of my knowledge, yes.

Q. Would the occasion for it be, for example, a special sale which was going to take place which might require greater cutting and preparation for it?

A. Yes.

Q. Would a new store opening be an occasion for working after 6:00 P.M.?

A. I assume that it would.

Q. Would the late arrival of a load of meat which had to be put in the refrigerators require the butcher to work after 6:00 P.M.?

A. Well, that would be an emergency situation. I  
1161 assume that there would be such a situation alright.

Mr. Dunau: No other questions.

*Cross-Examination by Mr. Christensen.*

Q. Mr. Vorbeck, with respect to this last series of questions on overtime, do you know of any instance where a butcher has ever refused to work overtime under these contracts? That is, after 6:00 o'clock, when the market manager has decided, for whatever reason, that he wants them to work?

A. I have no personal knowledge of such an instance.

Q. And butchers do, customarily, work after 6:00 o'clock when the market manager decides, for whatever the reason may be, that he has need for such service, isn't that correct?

A. Yes, that's correct.

1162 Q. Mr. Vorbeck, I do not think that we yet have in the record an accurate description of how the self-service system of selling meat operates, with respect to the

choices the customer has and when the customer completes the sale.

Would you state in general what the self-service system sale of meat is?

A. Yes, the meat cutters cut, trim, and weigh the meat, package it, put a label on it indicating the price and the name of the cut and the weight. Then they place it in a self-service case. From this case the customer selects whatever cut of meat item she wants. She leaves the meat department, where the self-service cases are located, and takes it, with her other purchases, which may be groceries and other meat items, to the check-out lanes, and it is checked out by a checker, who rings up the price; and she then pays for all the items that she selected, including the meat:

Q. Are there instances where after making an initial selection, a customer changes his or her mind and takes her meat back and decides she doesn't have enough money to pay for all she wants to buy?

A. Yes. In fact, I have done that myself, not because of that reason, but—

Q. Just changed your mind?

A. Just changed my mind. The thought occurred to me that my wife had already bought the particular item I had selected.

Q. And the actual sale is not made, is it, until the customer passes through the check-out counter and the checker totals up the meat and groceries, whatever they may be.

Up to that time the customer has the option of returning any item he or she may wish, do they not?

A. Yes, they even return it after they have paid for it. We refund the money at that point.

Q. Now, what union do the checkers belong to in your stores?

A. The vast majority belong to United Retail Workers

Union Independent. There are some who are members of the Retail Clerks International. There is a local at Benton Harbor, one at Kenosha, several locations. 1164 Another one at Racine. And downstate we have another International Local, but most of them are members of the Independent.

Q. Are they male or female?

A. Both. What, the checkers?

Q. The checkers.

A. The checkers are 99 per cent male. Once in awhile a young lad is on the check-out stand, but very seldom.

Q. I think you misspoke. I understood you to say "male".

A. Female: I am sorry.

Q. Female. None of them are members of the defendant unions here, are they?

A. No, sir.

Q. And they have no jurisdiction over them and nothing to do with the checkers?

A. That is correct.

Q. And no member of the Butchers Union in the self-service market actually completes a sale of meat, does he?

1165 Mr. Dunan: Are you limiting that question to Jewel Tea?

Mr. Christensen: Jewel Tea.

By the Witness:

A. That is correct, from Jewel Tea.

By Mr. Christensen:

Q. Now, if we can back up on these negotiations and take them backwards.

In the 1961 contract negotiations you testified that you signed that contract. Did that contract, like the others have this exception clause written into the copy you signed?



A. You mean the exception as to the validity of the—

Q. Yes.

A. I don't think so. Not in '61. I think we did that by a separate letter.

1166 Q. Well, there has been, ever since the suit was started, either written right on to the document you signed or—

Mr. Dunau: Objection. This is an awful lot of leading, Mr. Christensen.

Mr. Christensen: All right.

Mr. Dunau: You will recall we have a stipulation that each of the agreements entered into from '57 through '61, was subject to the Jewel's reservation on the market operating hours provision.

Mr. Christensen: Yes.

By Mr. Christensen:

Q. You testified a few minutes ago that on the 13th of November, 1961, you distributed to the various employers who were participating in that negotiation your offer, or the offer you proposed to make, with respect to night operations, and health and welfare, as I recall it.

Now, did you distribute it to all of the participating employer representatives?

A. Yes, sir. Everyone who was present on November 13th.

Q. Specifically, did you distribute one to Mr. Bro-mann's organization?

A. Yes, sir.

Q. The offer says that Jewel is making it on behalf of itself and any other employer who desires to join.

Did any other employer offer to join?

A. Not a single—

Q. To your knowledge?

A. No, sir. Never to my knowledge.



Q. Specifically, did the Associated or its agent, Mr. Bromann, offer to join in that offer?

A. He did not.

Q. Now, let me direct your attention to the negotiating meeting of November 2, 1961. You have testified this morning that you asked Kelly to assume that all provisions of a contract has been agreed to save the question of operating hours, and that the industry would tender to him an agreement limiting the sale of fresh meats to three nights a week, on the assumption also that Jewel would drop 1168 this lawsuit. Then you said that Kelly came back and responded to that and said that your assumptions were loaded, and that to negotiate night hours on the limited basis of three nights a week is unrealistic.

Can you tell in some detail what Kelly said in response to your proposal to him a little more than you did? You were pretty brief in your testimony.

A. What proposal do you refer to?

Q. Well, when you asked him to make that assumption, that all conditions of a contract were agreed to and that the industry came in with an offer for three nights of night operations and you asked Mr. Kelly under what conditions the union would be willing to recommend that the hours that fresh meat could be sold might be extended to Mondays, 1169 Thursdays, and Fridays, until 9:00 P.M.?

A. There wasn't a great deal of discussion. The purpose of asking those questions was to find out:

Do you want one journeyman on duty, or did he require a journeyman on duty at all?

1169 Do you want one, two, or more?

Do you want them every night; do you want them to start at 9:00 A.M., or at noon?

We didn't get the answer. We were just trying to find out what set of conditions the industry would have to meet to formulate an offer which would be acceptable to the union.

1170 Q. Well, I understood you to say this morning that Kelly came back and said that to enter into that kind of a contract would be conspiring with a group of employers to limit operations to certain nights and to certain hours, and it would be illegal?

A. He said that.

Q. Was there any further discussion about the legality or illegality of that proposal?

A. No, sir.

Q. Did Mr. Kelly explain how he couldn't touch what he conceived to be that illegality, but was not embarrassed to go ahead and ban all night meat sales, would enter into a contract that would even further limit them?

A. I recall that he made no further explanation.

Q. You have testified this morning that on November 3, 1961, the employers submitted a revised proposal to the union which made certain changes, but made no changes with respect to the restriction on market operating hours?

A. Yes, sir.

Q. Before the employers submitted that proposal, 1171 the employer-representative submitted that proposal, that they conferred with each other?

A. We always do, yes.

Q. Did Mr. Bromann and Associated participate in that caucus or this conference before a decision was arrived at by the group to submit this proposal which was submitted on November 3rd?

A. Yes, sir.

Q. Did you, as the representative of Jewel in this conference or caucus, endeavor to get the other employers to take a stand against removal of the night restriction?

A. I don't know that I did. I think about this time we regarded it as rather hopeless that there would be an agreement on it.

My notes reflect no attempt to persuade any one. They

simply reflect the proposal we put together, which was submitted on behalf of the industry.

Q. Now, did you have any discussion over Mr. Kelly's position that you testified to this morning that any demand for night operations had to come from the entire 1172 industry and must provide for seven hours of operations?

Mr. Daugherty: You mean seven days.

Mr. Christensen: What did I say?

Mr. Daugherty: Seven hours.

By Mr. Christensen:

Q. (Continuing.) —must provide for seven days and nights of operations and that the proposal would have to come from the entire industry?

A. Very little discussion, and I think the consensus was almost an unexpressed consensus, was that he had slammed the door, that he had made it impossible to negotiate further.

1173 Q. You identified a gentleman by the name of Neilubowski. He is one of the defendants in this lawsuit, is he not?

A. Yes, sir.

Q. Have you, on any occasion, heard Mr. Neilubowski discuss what the union's attitude should be with respect to taking a position on night operations, as between big operators and small operators, or anyone else?

A. I did, once.

Q. What did Mr. Neilubowski say, and when and where?

A. Back in 1957, at the contract drafting session. He made the comment—

Mr. Dunau: Just a moment. Do you have an independent recollection of this, without looking at your notes?

The Witness: I was merely trying to identify the exact date. I have an independent recollection, yes.

Mr. Dunau: All right.

1174 The Witness: The date was November 27, 1957.  
We said, "We are going to protect the—"

Mr. Dunau: Just a second. Don't read what you have in your notes.

The Court: You stated you have an independent recollection. State what that is.

The Witness: We were going to protect the independent fellow.

Mr. Christensen: I want to record an objection to counsel's tactics upon asking and inviting the witness to use notes upon a very lengthy conversation, and now objecting when he seeks to be as accurate and use notes on cross-examination.

Mr. Dunau: There is a rather big difference between an adverse examination and another type.

Mr. Christensen: There is no difference in accuracy in ascertaining the truth.

The Court: Is there anything further you have to add?

1175 The Witness: No, nothing. There was just one statement.

By Mr. Christensen:

Q. Now, when Neilubowski made that statement he was acting as a union spokesman, was he not?

A. Yes. He represented two locals.

By Mr. Christensen:

Q. At the contract drafting session?

A. That's right.

1178 By Mr. Christensen:

Q. Mr. Vorbeck, you testified here on November 2, 1962, Pages 773 and 774 of the record, the subject of your testimony was a conversation you had with Mr. Bromann in which you told him that your company was perhaps contemplating a lawsuit and that he and his association might be named as a defendant.

The record as it is typed up reads:

"I asked them if they would withdraw their opposition to night marketing. I stated that if some satisfactory market operating hours provision was not negotiated, that we would feel compelled to litigate this question, 1179 and that as principles on the issues extending the hours of operations, in that they undoubtedly would be named as one of the co-defendants, but I did not know just what co-defendant might be named at that point."

I have never known you to use that bad grammar, and I expect that there is some inaccuracy in the transcription.

Would you repeat again what you told Bromann and what he said to you when you had this conversation with him on or about October 11, 1957?

A. Well, the main thing that I told him, other than that, if we couldn't arrive at a satisfactory provision for operating nights, is that we felt compelled to litigate the legality of the market-operating hours restriction, and that undoubtedly the Associated Food Retailers as one of the principal opponents to the extension of night-operat- 1180 ing hours, would be named as a co-defendant.

There wasn't a great deal of further discussion. Mr. Bromann was really fairly quiet. I don't recall that he said much of anything.

Q. Well, when you told him that his organization was one of the principal opponents of it, did he deny that or discuss that with you?



A. No, he didn't discuss it; didn't deny it.

Q. The testimony as written here, then, apparently is—where it says “principles upon the issue,” this at Page 774, should have said “principal opponents,” and that is apparently the error that has been made?

A. Yes, sir.

Q. Now, Mr. Vorbeck, I am going to ask you some questions about the '57 negotiations, and unless counsel objects, you may refer to your notes to refresh yourself as to times and dates of meetings, supplementing your memory with whatever information you may have.

Can you tell me when the first negotiating meeting 1181 was held in the year 1957?

A. Yes, sir. September 5, 1957.

Q. At the Bismarck Hotel here in Chicago, I believe?

A. Yes. Right.

1182 Q. Was there an employer caucus before you sat down with the union members?

A. Yes, sir.

Q. And who was in attendance at that meeting, to the best of your information—the employer caucus?

A. Quite a long list.

Q. I will ask you to name them, if you have a record of them.

A. Yes, I have a record. I couldn't recollect them without the record.

Mr. Dunau: May I interrupt just to be sure we are talking about the people at the employer caucus and not the—

Mr. Christensen: Employer caucus.

By the Witness:

A. Joseph Port and Robert Cohen of National Tea.  
Verne Carr and Gordon Trunnell of Hillman's.  
Harry Rosenhagen, High-Low.  
Louis Carroll and James Parker for Kroger.



Adolph Ernst for A & P.

Van Ausdale for Piggly-Wiggly.

Al Kepner for Goldblatt's.

1183 Dick Richardson for Wieboldt's.

Tony Racz, R-a-c-z, for Safe Way.

I was present on behalf of the company, Jewel Tea Company, rather.

Ted Meindl for Del Farms.

C. H. Bromann for Associated Food Dealers.

Jim O'Connor for the Fair.

George Kokalis for Sure Save.

And Charles Kissell for IGA.

That's all that I see here.

Q. In that caucus was the subject of night openings discussed?

A. Yes, sir.

Q. And did you take any position with respect to it?

A. I have no position recorded, but I am sure I did, because we have always been in favor of nights.

Q. Did Mr. Bromann take a position with respect to it?

A. He reported on—yes, he did.

Q. And what did he say?

A. He reported that the majority of the people he  
1184 represented were opposed to night openings, either for five nights or for one night.

Q. And he was speaking for the Associated Food Dealers?

A. Yes, sir.

Q. Now, I believe you had a negotiating session on the 11th of September of 1957?

A. Yes, sir.

Q. Did you have a preliminary gathering of the employer representatives on that day before you sat down in open negotiations with Mr. Kelly's group?

A. Yes, sir.

Q. Was Mr. Bromann present?

A. Yes, sir.

Q. Did he take any position on that day with respect to nights of operation?

A. Yes, sir.

Q. What did he say on that subject?

A. He had been instructed to negotiate only the proposals demanded, plus delicatessen products, and no other proposals.

Q. Now, when you say, "the proposals demanded," 1185 he is referring to the proposals advanced by the union?

A. That is correct.

Q. And those proposals did not embrace any lifting of the ban against the night sales of meat, did they?

A. They did not.

Q. Did any of the other employer representatives in that employer caucus take a position or voice their views as to night sales of meat?

A. Yes.

Q. What did the other employers announce their positions were?

A. Well, two of the department stores said they were not interested in night openings, but didn't want to stop anyone else. That is Goldblatt's and I believe, the Fair—yes, Goldblatt's primarily, and the Fair. Wieboldt's expressed an interest in Friday night operations.

Q. Did these employers announce those views to Mr. Kelly, or was this in the employer caucus?

A. This was in the employer caucus only.

Q. And did the employers at any time arrive at any agreement to drop the ban on the night sales of 1186 meat, the employer representatives?

A. To completely drop it? No.

Q. Or to drop it for any nights?

A. At one point during the course of the negotiations, there was one offer in which everyone participated, providing for Friday nights of operations.

Q. That lasted for how long?

A. One session.

Q. Did you have a further negotiating meeting on the 18th of September?

A. Yes, sir.

Q. Did Mr. Bromann participate in that negotiating meeting?

A. Yes, sir.

Q. Did you have an employer caucus in connection with that meeting?

A. Yes, sir.

1187 Q. Please state whether or not you and Bromann had any discussion on the subject of restrictions of marketing hours?

A. We did.

Q. Was this in the caucus or in the open meeting in the presence of the unions?

A. In the open meeting.

Q. Now, will you state what was said on the subject of market operating hours?

A. Well, I asked the question:

Is it the position of your group—and this was directed to Mr. Bromann—that the present contract restricting market operating hours be continued with respect to the balance of the industry? And Mr. Bromann answered, yes.

Q. That conversation took place in the presence of Emmett Kelly, did it not?

A. Yes, sir.

Q. Did you have a further negotiating meeting on the 26th of September?

A. Yes, sir.

Q. Was anything said by Mr. Bromann, as the 1188 representative of the Associated Food Dealers, with respect to this position on the offers then outstanding?

A. Just that there was no change in their position insofar as market operating hours were concerned. He joined the industry on the part of their offer which pertained to an apprentice wage scale.

Q. Did you have a further meeting on the second of October, 1957?

A. Yes, sir.

Q. Did Mr. Bromann participate?

A. Yes, sir.

Q. Was there anything said on the subject of night operations?

Mr. Dunau: Is this at an employer group or with the union?

Mr. Christensen: I will find out. Just let him answer this.

By the Witness:

A. Yes, sir.

1189 Q. Did this conversation take place at an employer caucus, or at an open negotiating session with the union representatives?

A. It seems to have taken place in the presence of the union representatives.

Mr. Dunau: Objection to "seems."

The Court: Sustained.

By Mr. Christensen:

Q. What is your best recollection, judging from evidence available to you in your notes as to where it took place?

A. In the presence of the union.

Q. And what was the conversation on that subject?

A. Mr. Bromann, speaking for the independents, stated that the majority of his people were service operators, that night business comes from other operators, not from the chain customers, that his people were opposed to letting the bars down. That they were reiterating their original offer with one exception, and that they were making only one request and that was to free delicatessens 1190 on operations from the jurisdiction of the union under the self-service contract.

Q. I believe you were testifying about the statement that Mr. Bromann made on night operations at the meeting on October 7th.

Did he say anything as to whether his members were disposed to compromise on that issue?

A. He said that there was no compromise possible.

I would like to clarify the record, though: This was stated in an employee caucus later on that same morning. There were six items he discussed at that point.

Q. His statement that they wouldn't compromise was stated to the employers alone?

A. Yes.

1191 Q. The earlier statement—

A. The earlier statement was made just as I stated.

Q. Did you, in the employer caucus, take the position you wanted night operations?

A. Well, that was our position through 1957, '55, and each of the various years since we have acquired self-service.

The Court: What year was self-service established?

The Witness: It came in in late 1952.

The Court: And by "self-service," you are referring to the meat?

The Witness: Yes.

By Mr. Christensen:

Q. My notes show, Mr. Vorbeck, that in connection with your direct examination as to the meeting which was held on October 22, 1957, in which an offer was made for the industry save for the Jewel that made no provision for night operations, and you read an opinion from your 1192 counsel on the legality of it, you were asked a question in which counsel said, used the words, "Your stores would be open twenty-four hours a day, seven days a week, under your proposal."

Did you at any time, at any of these negotiations, ever state that it was the intention of Jewel to operate its stores twenty-four hours a day, seven days a week?

A. No, sir.

Q. Mr. Vorbeck, skip, if you will, to the meeting of November 12, and I will ask you if during that day Mr. Bromann took any position with respect to night operations?

A. Yes, sir.

1193 By Mr. Christensen:

Q. Did he say what he had to say on that day in the presence of the unions or in an employee caucus?

A. It was in an employer caucus.

Q. What went on in the employer caucus with respect to the subject of night operations on that day?

A. In the employer caucus?

Q. Yes.

A. An offer was put together, calling for one night of operation, Friday night, and it was agreed upon by everybody except the Associated Food Dealers.

Mr. Bromann wasn't present until about noon. He came in about noon and stated that he had been authorized to make an offer, but it contained no nights of operation, and it was our understanding, that is, the rest of the



industry's understanding he was going to take the rest of the industry's offer back to his policy group supposedly meeting on the evening of November 14th or some 1194 time on November 14th.

Q. Now, you say his policy group. You mean the policy-determining group of the Associated Food Dealers?

A. Yes, sir.

Q. Did Bromann ever follow that subject up with you in the following days?

A. Yes, sir, on the very next day.

Q. Which would be the 15th of November?

A. Right.

Q. And what did he say on that day?

A. He would not go along with the industry proposal for any night of operation. This was said out of the presence of the industry.

Mr. Dunau: Out of the presence of the industry?

The Witness: I am sorry. Of the union.

Then—do you want me to continue or—

Mr. Christensen: Well, just a second.

1195 By Mr. Christensen:

Q. On that day, did this employer caucus on the 15th take place in the morning or in the afternoon? When was it that Bromann made this statement?

A. On the morning of the 15th.

Q. Did any other employer change its position with respect to night operations on that date?

A. National Tea announced they were willing to reconsider and join in an earlier proposal we had made to the union in its offices.

Q. And what was that proposal in substance?

A. It called for five nights of operation, Monday through Friday, with the further condition that a journeyman must be on duty on Thursday and Friday nights and

subject to the further condition that the first employee called on other nights must be a journeyman.

It provided a substantial wage increase over the existing scale. It was quite a lengthy proposal. That was the essence.

1196 Q. Did Bromann take any position as to rates of pay or numbers of men that he would insist would have to be on duty if there were any nights of operation?

A. He did during an employer caucus.

Q. What did he say?

A. That one-half of the market personnel be on duty after 6:00 P. M., whenever the market was open after 6:00 P. M.

Q. He wanted what?

A. One-half of the market personnel.

For example, you have six meat cutters; he wanted three on duty.

Q. Well, did he make any statement with respect to how many would have to be on duty if you were open on Friday night?

A. No, his was with respect to any nights.

Q. About what time of day did the employers sit down or meet with the union people?

A. The union came in about 11:30 in the morning. They promptly called a caucus with a small group of union  
1197 representatives and a small group of employer representatives.

Q. And who picked out the employer representatives?

A. I am not sure whether the—I think they rather picked themselves, but I am not sure.

Q. Was Mr. Bromann one of those?

A. Yes, sir.

Q. And was this Ted Meindel one of the fellows who testified for the defendants here, was he also a purported employer representative in that—

A. Yes, sir. .

Q. And you didn't hear what those gentlemen discussed?

A. We were not present at the discussion. All we got back was a report later on as to what they would do.

Q. Did Bromann join in any industry offer on that day at all?

A. I have a conflict in my recollection with my notes, and I have had it at every point in this testimony.  
1198 My recollection is that he did join with the industry for one night of operation some time during this day.

Q. Did he submit a separate offer of his own on that day?

I direct you to Page 2 of your handwritten notes.

A. No, he did not submit that as an offer. That was in discussion with the employer group only.

Q. So that publicly, so far as you know, Bromann with the union consistently opposed night operations?

Mr. Dunau: Objection, your Honor. That is as leading as one could possibly be.

Mr. Christensen: That is correct.

Mr. Dunau: No, it is not correct, because the witness has just testified that on November 15th, Bromann joined with the industry on a proposal for one night of operation on Friday night.

1199 Mr. Christensen: No, he has just testified that was correct.

The Court: Let's clear it up.

Mr. Christensen: That is what I am trying to clear up.

The Witness: I can't agree with you, counsel. He did join at one time, and it was on the 15th.

Mr. Christensen: He did.

By Mr. Christensen:

Q. Then what is it you are referring to on the 15th that he did only to the employer group? I am confused.

A. That gets down to the conditions under which we would agree to nights, and he was discussing the flexible work day and the requirement of somebody being on duty.

This was after the caucus with the—I think it was five men—four men, including—plus Mr. Bromann, and at which they finally came to agreement with the industry on one night of operation.

1200 Q. All right. Now, you have testified that about a week before this you had presented an offer directly to the union on behalf of Jewel at the union office.

A. Yes, sir. Two weeks, actually.

Q. Two weeks, yes.

Did you present that on Friday, November 1st?

A. Right.

Q. And with respect to the subject of night operations what did your offer to the union provide?

Mr. Dunau: The offer is in the record.

There is hardly any purpose in asking the witness what the offer is. The exhibit is in evidence.

Mr. Christensen: All right.

The Court: Question withdrawn?

Mr. Christensen: I will withdraw it. I think counsel is correct.

By Mr. Christensen:

Q. In the joining in the offer of the 15th of November, for one night of operation, did Bromann take any position as to whether the one night of operations would commence in the first or second year of the contract?

1201 A. At the point he joined in, I don't think he did. He had expressed a prior opinion that it should be the second year of the contract.

Q: He expressed that publicly to the union, did he not?

A. I do not know.

1202 *Redirect Examination by Mr. Dunau.*

Q. Mr. Vorbeck, concerning the statement that you testified to that Mr. Neilubowski made on November 27, 1957, on that date, agreement had already been reached previously on the entire subject of negotiations pertaining to the Chicago area, had it not?

A. Yes, sir. Chicago area excluding 189.

Q. Excluding 189, you are quite right. Was the statement made by Mr. Neilubowski made to you?

A. Yes, it was a side conversation between myself, Mr. Neilubowski, and Mr. Louis Carroll of the Kroger Company.

Q. You participated in this conversation?

A. There wasn't much conversation. He just made the statement.

Q. What was the context in which he made the statement?

A. On that particular date we had two things going. First, we did the contract draft in session, and then we followed it immediately with further negotiations with 189.

1203 And I think it had to do with a proposal made by the Kroger Company with respect to 189, with reference to the so-called flexible work day.

In Group 2 of 189, which is the Rockford area, they had a work day which started at 9:00 A. M., and ended at 9:00 P. M. The Kroger proposal, which incidentally was joined in by all the chains, calls for a work day which would provide eight hours of work to the meat cutters but would not necessarily start at 9:00 A. M.

In other words, it would cut down the amount of total

pay for the day's work. You would get either two and a half or three hours of overtime for the hours worked after 6:00, and five and a half or six hours straight. And Alex's comment—

Q. When you say "Alex" you mean Alex Neilubowski?

A. Yes.

(Continuing): —had relationship to this flexible work day. I am not clear on how it got tied in to 189's negotiations. I just remember that he was talking about the service markets and in the service market operation 1204 you have to have a man on duty all day in order to perform. You don't have to do that in the self-service market.

Q. Now, he was talking, as you recall it now, about the flexible work day in Group 2 of Local 189, is that it?

A. Flexible work day has been part of the discussion in the main negotiations as far as that is concerned.

Q. At the time you are talking about now, on November 27th, was this statement made in connection with a discussion of the flexible work day pertaining to Group 2 of Local 189?

A. Not particularly. He was just—it came out that the offer was made and it was made in connection with the offer prepared by the Kroger Company.

1205 Q. And the offer that he was talking about pertained to a flexible work day in Group 2 of Local 189, is that it?

A. In Group 2, and the new Group I-A, yes.

Q. Now, in Group 2 and the new Group 1-A of Local 189, night operation had been permitted, had it not?

A. Not in 1-A, but it had in Group 2.

Q. But in 1-A, as the result of the 1957 negotiations, night operation was permitted, is that correct?

A. It subsequently developed, yes.

Q. All right. So that this statement was made in con-



nection with Group 2 and Group 1-A in which night operation was permitted, is that it?

A. Well, in which we were seeking to get night operations, yes.

Q. You already had it in Group 2?

A. Right.

Q. And obtained it in Group 1-A?

A. Yes. And we had sought it in Chicago, too, if we could get it.

1206 Q. We are talking about a conversation on November 27th, a statement made by Mr. Neilubowski.

Now, with respect to that statement of November 27th, it was made in a context of a discussion of Group 2 and Group 1-A of Local 189?

A. Not completely.

Q. Well, you put the time.

A. In the first place, Mr. Neilubowski, as I recall it, didn't stay for all the 189 negotiations. This was the tail-end of the contract. This was an explanation of why they felt they had to have the same conditions in, I assume, service and self-service. He didn't elaborate. It was just a short comment in response to this offer which had just been outlined.

Q. The offer pertaining to Group 2 and Group 1-A of Local 189?

A. Yes, sir.

Q. And in Group 2 of 189, you always had night operations, is that correct?

A. In my personal recollection, yes.

Q. In Group 1-A you obtained night operations in 1207 1957, is that correct?

A. Yes, sir.

Q. All right. Now, Mr. Vorbeck, would you look at the report of October 23, 1957, which you made to Mr. Hargrave?

A. I have it.

Q. All right. Now, look at the concluding paragraph on Page 3. Is that a statement to Mr. Hargrave of what you told Mr. Kelly at the meeting of October 22nd?

A. Yes, sir.

Q. All right. Now, look at the last part of the paragraph on Page 4. Did you report to Mr. Hargrave that you had said this to Mr. Kelly:

"We would much prefer to negotiate for one or more nights of operations and would abide by the results of such negotiations if they were satisfactory to us. But if they were not, we felt impelled to litigate the matter even though our successful outcome of such litigation would inevitably mean that the market operations would automatically be opened to seven days a week, twenty-four hours per day, of operation."

A. I made that statement to Mr. Kelly.

Q. All right.

1212

Wednesday, November 28, 1962,  
2:00 o'clock, P.M.

Court convened pursuant to recess.

1213 R. EMMETT KELLY, recalled as a witness, having been previously duly sworn, deposeth and saith further as follows:

*Direct Examination by Mr. Dunau.*

Q. Mr. Kelly, are the defendant local unions in this case separate autonomous unions?

A. Yes, they are.

Q. As a member of the bargaining—in what year were

joint negotiations between unions as a group and employers as a group first begun?

A. Approximately 1941.

Q. Now, before 1941 what was the method of bargaining which prevailed?

1214 A. Before 1941, Local 546, which was the largest of the seven local unions, did the bargaining and, in the end, whatever resulted from the Local 546 bargaining was generally passed on to the other locals, which were smaller locals.

By Mr. Dunau:

Q. Now, with what group did Local 546 bargain?

A. At what particular stage?

1215 Q. Before 1941?

A. Before 1941 we bargained with an independent group known as the Retail Dealers Association. Another independent group known as the Northwest Polish Meat Dealers Association. One known as the Southwest Meat Dealers Association, and at one phase of our negotiations in the Thirties and before 1940, there was another group known as the Cook County Grocers Association, and with any of the chain stores that may have been in existence at that time.

Q. Did you bargain with these employers as a group?

A. Not necessarily as a group, no.

1216 Q. Was joint negotiations instituted in 1941, in order to strengthen the bargaining position of the defendant local unions?

Mr. Christensen: I will object to that.

The Court: . Overruled.

By the Witness:

A. Yes, it was.

By Mr. Dunau:

Q. Would you explain in what way it was designed to strengthen the bargaining positions of the local 1217 unions?

A. Well, actually some of the smaller local unions had fallen behind, in wages for example, in other conditions of employment. In order to bring them up to the same level it was decided that bargaining as a group would be the best way to do it.

Q. Beginning with what year were the materials of the collective bargaining agreements covering meat markets in the Chicago area identical?

A. Well, this, I believe, dates beyond my time with the organization. All of the contracts in the City of Chicago, were of identical nature as far back as I can remember, and I can remember back as far as 1931.

1218 By Mr. Dunau:

Q. And was that uniformly the consequence of the other local unions following the local 546 lead?

A. Yes, it was.

Q. Now, beginning with what year to your knowledge did the collective bargaining agreements contain a provision pertaining to market operating hours?

A. To my knowledge, ever since I have been with the Amalgamated Meat Cutters in 1931.

Q. About how many representatives are on the negotiating committee of the defendant local unions when they participate in bargaining with the employer group?

A. That total will range anywhere from 17 to approximately 23.

Q. In the years preceding 1957, during negotiations between the union group and the employer group, was there

a time that Mr. Charles Bromann acted as the chairman of the employer group?

A. Yes, sir, there was.

Q. Do you recall when that was?

A. It was in the '50s, I am quite positive.

1219 Q. Did he act as the chairman of the employer group for the entire period of the negotiations?

A. Yes, he did in one particular year.

Mr. Dunau: Would you mark this Defendant Unions' Exhibit 40 and then each succeeding agreement 40-A, 40-B, etc.

(Said documents were marked Defendant Union Exhibits 40 and 40-A through 40-Q, both inclusive, for identification.)

By Mr. Dunau:

Q. Mr. Kelly, did you have a search of the files of Local 546 made in order to uncover each of the agreements entered into by Local 546 since 1941, each of the standard agreements?

A. Since 1941?

Q. I am sorry. Since 1919?

A. Yes, we did.

Q. I show you the agreement for 1920, identified as Defendant Unions' Exhibit 40, and ask you whether that was the agreement which you found for that year?

1220 A. Yes, this is.

Q. Did you find an agreement for 1919?

A. No, sir, we did not.

Q. I show you the agreement for the year 1937 to 1938, identified as Defendant Unions' Exhibit 40-A, and ask you whether that was the agreement found for that year?

1222 The Court: Well, the objection is overruled. They are received.

(Whereupon the documents marked DEFENDANT UNIONS' EXHIBITS 40 and 40-A through 40-Q, were received in evidence.)

1223 Mr. Dunau: Then for the record I should say that the agreements which have been received in evidence are Defendant Unions' Exhibit 40 through 40-Q.

Perhaps, Mr. Christensen, we can stipulate as to this: That for the interval between September 30, 1950 through October 1, 1951, the agreement that was to expire on September 30, 1950 was automatically renewed for one year.

Mr. Christensen: That is all right.

Mr. Dunau (Continuing): That the agreement which was to expire on October 2, 1954 had a wage reopener clause effective on October 2, 1953, that the agreement was open in 1953 for wages only and otherwise all its terms remained in effect through 1954.

Mr. Christensen: That is a fact. If you state that is the fact.

Mr. Dunau: That is the fact as I have been able to ascertain it.

1224 Mr. Christensen: I will stipulate to it.

Mr. Dunau: And my reason for putting it in evidence is to simply fill out the entire chronology.

Mr. Christensen: I understand.

Mr. Dunau: And the fact, as I have been able to ascertain it, is that the agreement that was due to expire on October 2, 1954, was carried over by automatic renewal for one year, to October 2, 1955, and that the agreement that was due to expire on October 6, 1956, was carried over for one year by automatic renewal until October 6, 1957.

Mr. Christensen: We will stipulate to those facts, subject to the same objection I previously voiced.

By Mr. Dunau:

Q. Mr. Kelly, it is in evidence as a result of the testimony of Mr. Lunding that Jewel Tea began operating



meat departments in the Chicago area in either 1225 1933 or '34.

Did the local unions have collective bargaining agreements with Jewel Tea covering Jewel's meat department operations from the time that Jewel began operating meat departments in the Chicago area?

A. I, personally, negotiated contracts with Mr. Frank Lunding in 1936, and it is my knowledge that they did have union contracts at the time of their opening shops in Chicago.

1226 Q. Mr. Kelly, did each of the agreements that Jewel Tea entered into from the first agreement it entered into contain a provision governing market-operating hours in its meat departments?

A. Yes, they did.

Q. Was it the same provision which was in the agreements with all other employers in the Chicago area?

A. It was identical.

1227 Q. In the Chicago area does the work of a butcher in a self-service meat department include replenishing the stock in the retail counters?

A. It certainly does.

Q. Does the work of a meat cutter in a self-service meat department include rearranging the meat in the counters?

A. Yes, it does.

Q. Does the work of a meat cutter in a self-service meat department include cleaning the cases?

A. Yes, it does.

Q. It is in evidence, Mr. Kelly, that in 1957, IGA Table-Right, through Mr. Charles Kissell, participated in the negotiations.

What is IGA Table-Right?

A. IGA is more properly known as the Independent

Grocers Association, and is an independent cooperative buying group that services a group of stores.

1228 Table-Right is their meat merchandising method.

1229 Q. And who is Charles Kissell?

A. Charles Kissell, during 1957, was the meat superintendent or meat supervisor for IGA.

Q. Do you know how many stores Mr. Kissell represented in 1957?

A. Yes, sir.

Q. How many?

A. Approximately 60.

Q. Were the meat departments in these stores service or self-service?

A. In the main, they were service.

1230 Q. Mr. Kelly, I show you what has been marked Defendant Unions' Exhibit 41 for identification, entitled, "Proposal Made To The Union On November 12, 1957."

I ask you whether this document was given to the union group on November 12, 1957, as an employer proposal, excluding Associated Food Dealers?

A. Yes, it was.

Q. Are the notations on this document all in your own handwriting?

A. Yes, they are.

Q. Look at the notation in the upper left-hand corner. Would you explain to me—would you read that, and tell me what that is?

A. Well, I had made a personal notation to inform myself of the next scheduled meeting. I have said here:

"Next meeting of industry November 15th, union at 11:00 o'clock. In office at 9:30. Glen Fleischman."

1231 I believe he had something to do with—

Q. Was he an arbitrator?

A. I believe he was.

1232 Q. You will notice that "Jewel Tea Company, Incorporated" is crossed out and substituted is "Associated Food Dealers who will take back and report."

A. Yes, sir.

Q. What does that mean?

A. We were instructed by the employers group to strike, as we did, and to insert as we did.

Q. Now, in the right-hand margin is the statement "Offer covers:" and then an enumeration of the employers.

Were you told by the employer group that this proposal covered these employers?

A. Yes, we were.

Q. Now, there also is a notation of wage rates in your handwriting.

Were these the wage rates you were told by the employer group to put into the proposal?

A. Yes, they are.

Q. And also on the first page there are—there is material which is crossed out.

Were you told by the employer group to cross 1233 that out?

A. Yes, we were.

Q. Now, on Page 2 of the proposal, opposite "5," there is the notation "\$1 per day." Will you tell us what that is?

A. Well, this is the premium rate of pay that would apply to the fifth day of work in a holiday week or the sixth day of work in a regular week.

It was based on the rate of \$1 per day.

Q. Was that based on what the employer group had proposed?

A. Yes, sir.

Q. Now, the last page of the proposal opposite "13,

Article 2," there appears in your handwriting after "ham slices," "plus picnics."

Were you asked to insert that by the employer group?

A. Yes, we were.

Mr. Dunau: I offer Defendant Unions' Exhibit 41 into evidence.

1234 The Court: It is admitted.

(Said document, so offered and received in evidence, was marked DEFENDANT UNIONS' EXHIBIT NO. 41.)

Mr. Dunau: Would you mark this as Defendant Unions' Exhibit 42, please?

(Said document was marked Defendant Unions' Exhibit 42, for identification.)

By Mr. Dunau:

Q. Mr. Kelly, I show you what has been marked Defendant Unions' Exhibit 42, a proposal made by the union on December 15, 1957.

1235 .Is that the proposal which was given to you by the employer group at the meeting on November 15, 1957?

A. Yes, it was.

Q. Are the handwritten notations on that proposal in your writing?

A. Yes, they are.

Q. Does the notation on the upper left-hand margin "Bismarck, November 15, 1957," identify the place and time of the meeting?

A. Yes, it does.

1236 Q. There are some numerals on the upper right-hand side of Page 1 of Defendant Unions' Exhibit 42. Would you please state what these numerals are?

A. This was an approximate tabulation of my own making for my own benefit of the amount of membership contained within these six local unions that are listed.

Q. Now, you will notice that November 12 is crossed out and 15 is substituted. Were you asked by the employer group to make that substitution?

A. Yes, sir, we were.

Q. You will notice that "Excluding Associated Food Dealers, Inc.," was crossed out. Were you asked by the employer group to cross that out?

A. Yes, we were.

Q. Was this a proposal made on behalf of the entire employer group, including Associated Food Dealers?

A. Yes, it was.

Q. You will notice opposite 2, December 2, 1957, is crossed out and substituted in its place is October 1237 6, 1958.

Were you asked by the employer group to make that substitution?

A. Yes, we were.

Q. Did that mean that the proposal for night operations listed opposite 2 was to come in effect the second year of the contract term?

A. That is correct.

Q. Were the wage rates on Page 1 which are in your writing wage rates which you were told by the employer group to insert on this proposal?

A. Yes, we were.

Q. Do you recall what the meaning of the numbers 8 and 4 above "effective date" means?

A. Yes, for a full day and for a half day. 8 and 4.  
Mr. Christensen: What?

Mr. Dunau: For a full day and a half day.

The Witness: I think that's—I can only remember that we talked in terms of eight hours and four hours, 1238 and to me that is about the only thing those two numbers could mean.

Mr. Christensen: Now, could I interrupt?

Mr. Dunau: Sure.

The Witness: I don't recollect what that is.

Mr. Christensen: The 8 and the 4.

By Mr. Dunau:

Q. Now, at the bottom of the page, you have a notation after a marking which includes part time wrappers, in parentheses "Employers state will not stand in way of settlement."

Did the employer group ask you to insert that?

A. Yes, they did.

Q. And what did that mean?

A. Well, they had up to this point wanted part 1239 time wrappers, and they made it apparent in this particular offer that this would not be in issue and would not stand in the way of a settlement if we saw fit to object to it.

Q. Now, on Page 2, the proposal, opposite 5, "Present amount of premium" is crossed out, and "At 25 cents per hour premium" is substituted.

Were you asked by the employer group to insert that?

A. Yes, we were.

Q. Now, under 6(a)1, Tuesday, Wednesday, Thursday, "and" is crossed out, and substituted in its place is the word "through."

Were you asked by the employer group to insert that?

A. Yes, we were.

Q. Under 6(a)2, there is the notation, "Effective October 6, 1958."

Were you asked to insert that?

A. Yes, we were.

Q. On the rest of that page where there are insertions and cross-outs, were you asked by the employer group to make the insertions and the cross-outs?

A. Yes, we were.



Q. On Page 3 of the proposal, there are likewise insertions and cross-outs.

Were you asked by the employer group to make those insertions and cross-outs?

A. Yes, we were.

Mr. Dunau: I offer into evidence Defendant Unions' Exhibit 42.

Mr. Christensen: No objection.

The Court: Admitted.

(Said document, so offered and received in evidence, was marked DEFENDANT UNIONS' EXHIBIT 42.)

By Mr. Dunau:

Q. On November 15th, Mr. Kelly, prior to submission of what has been introduced as Defendant Unions' Exhibit 42, the proposal made by the entire employer group on November 15th, did you have a meeting with a 1241 group of employers, including Charles Bromann?

A. Yes, sir, we did.

Q. Who was present on behalf of the defendant local unions?

A. Myself, Mr. Alex Neilubrowski, Mr. Frank Flax, one or two others, I cannot recollect who they were, but those I do remember.

Q. Who was present of the employer group?

A. Mr. Carl Bromann, Mr. George Cokalis, Mr. Gordon Ship, Mr. Charles Kissell, Mr. T. J. Meindel, that I can recollect.

Q. Who is Mr. Ship?

A. Mr. Gordon Ship is the owner of Mayflower Foods in Chicago.

Q. Would you please tell us what took place at this meeting of this employer group and union group?

1243 Q. Would you please describe what took place at this meeting between this employer group and union group?

A. This was a group that we were told by this group that had the permission of the entire employer group to meet with us to talk about the operation of meat departments at night. We discussed it in the caucus meeting in another room within the Bismarck Hotel, other than the meeting room we were in on that particular date.

Q. What was the discussion—

Mr. Christensen: Now, I must again object to this. This man is endeavoring by the declaration of an alleged agent to create authority for them to say they had authority. He is reciting declarations which he said were made by some of these people to make this conversation binding on us, and you cannot prove agency that way.

Mr. Dunau: He is describing a conversation. He is not trying to prove any agency.

1244 Mr. Christensen: What he has described makes the balance of this incompetent as against the Jewel Tea Company.

The Court: Overruled.

By Mr. Dunau:

Q. What was the discussion that was had with respect to market operating hours after 6:00 P.M.?

A. Well, at this meeting these people were attempting to prevail upon the union to accept some type of night operation, and they were advancing their own particular reasons for such a want.

Q. Did Mr. Bromann ask the unions to agree to night operations?

A. Yes, he did.

Q. What was the response of the union with reference to these proposals of the employer group for night operations?

A. We told them that we would take it back to the full committee and give them a report later in the day.

Q. And as I understand it, it was following this meeting that the proposal of the entire employer group, 1245 in evidence as Defendant Unions' Exhibit 42, which I show you, was offered to the union group?

A. That is correct, sir.

Q. I show you what has been received in evidence as Defendant Unions' Exhibit 21 and Defendant Unions' Exhibit 21-A, 21 being a letter to you from Mr. Vorbeck dated November 22nd, and 21-A being an offer made on behalf of Jewel Tea on November 22, 1957.

Were these papers given to you by Mr. Vorbeck in your office at about 12:45 P. M. on November 22nd?

A. Yes, they were.

Q. Did Mr. Vorbeck ask you to submit this proposal of the Jewel Tea to the membership at the ratification meeting?

A. Yes, he did.

Q. Did you agree to submit this proposal of Jewel Tea Company to the membership at the ratification meeting?

A. Yes; I did.

Q. Did you receive a phone call from Mr. Vorbeck at 9:30 A. M., about, November 23, 1957?

1246 A. Yes, I did.

Q. Would you please tell us what that conversation was?

A. Mr. Vorbeck phoned me in the union office on that particular morning—it was a Saturday morning—a day prior to the special contract meeting, and made a request that if the proposition he had submitted the previous day was rejected by our membership, would we in its place submit a second proposition. I believe it had to do with female help only.

1247 Q. Would you describe, particularly, what the

second proposition was that Mr. Vorbeck wanted you to submit to the membership?

A. Well, I think what he wanted in the second instance was to submit the same proposition as he had brought to my attention by letter the previous date, only dropping the request for night operation and inserting in its place female operation—female help.

Q. Then, to be entirely precise about this, this alternative he wished you to submit to the membership which he asked you to submit on November 23, 1957, was one in which night operations would be dropped from Jewel Tea's proposal?

A. This is correct.

Q. Now, on Saturday morning November 23rd, the same day still, at 10:30 A.M., did you have a meeting with a Mr. Stapleton and a Mr. Cohen?

A. Yes, sir, I did.

Q. Who is Mr. Stapleton?

A. Mr. Stapleton presently is the president of the National Tea Company.

1248 Q. At that time what was his job?

A. Mr. Stapleton at that time was branch manager for the National Tea Company.

Q. And who was Mr. Cohen?

A. Mr. Cohen at that time was director of Labor Relations for the National Tea Company.

Q. Where was this meeting held?

A. It was held in the offices of our attorney, Mr. Lester Ascher.

Q. Was he present at the meeting?

A. I believe he was.

Q. Would you please state what took place at this meeting?

A. Well, National Tea—

Mr. Christensen: Same objection to this. I don't see that this has any bearing upon this lawsuit.

The Court: Overruled.

Mr. Christensen: This is conversation that these gentlemen had, of the National Tea Company.

1249 By the Witness:

A. National Tea made the same request for night operations that Jewel had previously made, except they were making it orally, of course.

By Mr. Dunau:

Q. Did they state that they were going to go along with the proposal that Jewel Tea had asked you to submit to the membership?

A. The first proposal.

Q. Which included night operation, plus female help?

A. This is correct.

Q. They did not ask you to submit a proposal which deleted night operation?

A. No, sir, they did not.

Q. Did they make any statement pertaining to a legal action against the union?

A. Yes, they indicated they would join Jewel in litigation.

Q. Was a meeting of the membership held of Local 546, held on November 24th, to ratify the contract which had been reached?

A. Yes, it was.

1250 Q. Was this a Sunday?

A. Yes, it was.

Q. About how many members were present at this meeting?

A. Upwards of 3000; sir.

Q. In preparation for such a meeting, do you prepare

an outline of the proposals and counter-proposals which have been made in the course of negotiations?

A. Yes, I do.

1251 Q. On the basis of this outline do you then review with the membership the proposals and the counter-proposals that have been made in the course of the negotiations?

A. In their entirety.

Q. Did you do that at this meeting?

A. I did.

Q. Did you tell the membership of the three issues that they were to vote on?

A. Yes, sir.

Q. What were they?

A. One was the all-industry offer. That we considered to embrace an 85 per cent majority of our employers. And the other was the Jewel offer that had to do with night operation and female help, and in which National Tea had joined. And the third was the offer that they had made based on female help only.

Q. Were these three proposals put to a vote of the members?

A. Yes, sir, they were.

Q. Was the all-industry proposal accepted by the  
1252 members?

A. It was.

Q. Was the joint Jewel-National Tea proposal rejected by the members?

A. Yes, it was.

Q. Was the alternate Jewel proposal rejected by the members?

A. Yes, it was.

Q. Did you then conduct a secret strike ballot among the members to secure authorization for a strike against National Tea and Jewel Tea, if that were necessary?



A. Yes, we did.

Q. Do you recall the outcome of the vote?

A. Roughly, there was some 2200 in favor of a strike, with approximately 100 opposed.

Q. Now, you told us that there were upwards of 3000 at the meeting, and the vote comes to approximately 2300. Would you explain the difference?

A. Yes, as is historical in our meetings, as quickly as the meeting itself is finished, a certain percentage of the membership that might have been within the meeting 1253 hall, have reasons for leaving hurriedly. Only those who remain cast their ballots.

—Mr. Christensen: I thought this vote took place at the meeting?

By Mr. Dunau:

Q. Would you explain that, please?

A. It did take place at the meeting, sir.

Q. Did some of the members start walking out of the meeting at the conclusion of the vote on the three contract proposals which had been submitted to them?

A. Yes, sir, they did.

Q. Now, were there ratification meetings held on that day by all other of the defendant local unions except Local 189?

A. Yes, there were.

Q. Did you submit to the representatives of those other local unions the outline of the proposals and counter-proposals which you had used in your meeting at Local 546?

A. I had done that earlier, yes, sir.

Q. Is the Local 546 meeting held earlier in the day than the other ratification meetings of the other local unions?

A. Yes, sir, it is.

Q. Is that customarily held that way?

A. It is always held that way.

1255 Q. Would you please state the reason for that?

A. Well, the other local unions want to be in a position of guidance, I presume, from what the members of the Local 546 does, 546 being the larger of all the unions.

There is a telephone contact made between all the meetings and the 546 meeting. They start approximately one-half hour later than we do. They are kept apprised of our meeting. They make the same recommendations that we make in our meeting.

Q. Was there such telephone communication on November 24th?

A. Yes, sir.

Q. Did the representatives of the other local unions report to you the vote of their meetings?

A. Yes, that afternoon back in the union office they reported by telephone.

1256 Q. On November 24, 1957, after the meeting of Local 546 was concluded, did you telephone Mr. Vorbeck?

A. Yes, I did, sir.

Q. Did you telephone him in accordance with a request made by Mr. Vorbeck on November 23rd?

A. I did, sir.

Q. Did he ask you, on November 23rd, to telephone him what the outcome of the ratification meeting was?

A. He did.

Q. Did you report to him what the outcome of the ratification meeting was?

A. I did.

1257 Q. Did you report to him the outcome of the meetings of Local 546 and the other defendant local unions?

A. To the best of my ability if they were concluded, yes.

Q. What did you report to him with respect to the outcome of the meetings of the other local unions?

A. That they, too, had ratified the same contract that 546 had ratified.

Q. I show you what has been marked Defendant Unions' Exhibit 43 for identification, entitled

"Amalgamated Meat Cutters and Butcher Workers 1258 of North America, Local 546, Special Contract Meeting, Sunday, November 24, 1957,"

and ask you whether that is a copy of the minutes of the meeting of Local 546 on that day?

A. Yes, sir, it is.

Mr. Dunau: I offer that in evidence.

Mr. Christensen: May I just take a second, your Honor?

The Court: Very well.

Mr. Christensen: I will object to this. These sheets purport to be the minutes kept by this union of a meeting, and I don't think they are any more admissible than was the report that Mr. Vorbeck made to Mr. Hargrave, which counsel objected to this morning.

Counsel has examined the witness as to what went on at the meeting. I examined him some weeks ago. But the minutes themselves offered by the union are mere 1259 self-serving documents of their own records, and I believe inadmissible.

Mr. Dunau: The minutes, your Honor are competent to show what transpired at a meeting. They are relative in this case to show that all that has happened in the course of this entire controversy is conventional union activity.

Mr. Christensen: Whatever your purpose may be they are not competent. They are mere self-serving minutes

that were made up. No more than you would let me put in Mr. Vorbeck's report to Mr. Hargrave can you put in Mr. Kelly's report to the secretary of his own meeting.

The Court: I think the objection is well founded. Sustained.

Mr. Dunau: May I make this exhibit part of the record as an offer of proof, your Honor?

The Court: You may..

Mr. Dunau: As I understand it then, this exhibit 1260 will be included in the record as an offer of proof.

The Court: It may.

By Mr. Dunau:

Q. Mr. Kelly, are contract ratification meetings among the members of the defendant local unions customarily conducted to determine whether the terms of settlement recommended by the negotiating committee are acceptable to the members?

A. Yes, they are.

Q. Are these meetings customarily held on Sunday?

A. Yes, they are.

Q. Why are they held on Sunday?

A. Sunday affords a better opportunity for our meat cutter members to attend a meeting, because it is the only day off during the week. That is the only day on which they are all off. You get a better turn-out.

1261 Q. Now, prior to the inception of negotiations do the local unions seek to ascertain the wishes of the members on the question of contract terms to be negotiated?

A. Yes, we do.

Q. By what means do the local unions seek to ascertain the wishes of the membership?

A. Well, many, many weeks prior to the opening of the contract negotiations we will hold group local union meetings of the official staffs, at which time we will prepare

surveys, ask these fellows as they go in and out of the markets—and they go in and out often—to ascertain the wishes and desires of the meat cutters that we represent.

Q. Now, after these business agents made this survey, what is then done?

A. We then call a joint meeting of all of the local unions involved, and prior to that we have asked each local union to write out their immediate demands from their own immediate locality and bring these in to 1262 the union office for a group meeting.

From those seven local unions and the seven different types of demands, we boil it down to one final set of contract proposals.

Q. Are these then the contract proposals that are submitted to the employers?

A. Yes, they are.

Q. During the course of the negotiations, do the local unions seek to ascertain the wishes of the members?

A. Yes, of course.

Q. By what means?

A. Well, again, on a daily basis as they travel in and out of the shop and in our regular union meetings.

Q. When you say "they," who are you referring to?

A. The business representatives from the various local unions.

Q. Now, after you had this telephone conversation with Mr. Vorbeck on November 24, 1957, when you informed him of the outcome of the contract ratification meetings, did you thereafter have a telephone conversation with 1263 Mr. Bob Cone of National Tea?

A. Yes, sir, I did.

Q. Do you recall when that conversation was?

A. I believe it was about mid-week after the Sunday meeting.

Q. Will you state what was said in that conversation?

A. Well, the gist of the conversation was to the effect that they were going to accept the contract that everybody else had accepted, that actually they would not litigate, but they were prepared to take a strike.

Q. Now, at the conclusion of the 1959 negotiations, was a contract ratification meeting held at Local 546 on Sunday, December 14, 1959?

A. Yes, there was.

Q. On that day did you conduct a ratification meeting in the same way as the one in 1957?

A. Yes; we did.

Q. Did you review with the membership the proposals?

1264 A. Every one.

Q. Did you submit to the membership the agreement which had been reached with the employer group?

A. Yes, we did.

Q. Did the membership vote to accept the agreement which had been reached.

A. They did.

Q. Did the other local unions conduct ratification meetings at that time?

A. They did.

Q. Was there the same communication between the other local unions and Local 546 in 1959, as in 1957?

1265 A. Yes, there were.

1267 Q. I show you what has been marked Defendant Unions' Exhibit 44 for identification, entitled Amalgamated Meat Cutters and Butcher Workers of North America, Local 546, Special Contract Meeting, Sunday, December 13, 1959, and ask you whether that is a copy of the minutes of the meeting of Local 546 on that date?

A. Yes, it is.



Mr. Dunau: I offer that in evidence.

Mr. Christensen: Same objection as to the other minutes. I will have no objection if you wish it to stand as an offer of proof.

The Court: It may stand as an offer of proof. The objection is sustained as to the exhibit.

By Mr. Dunau:

Q. There was a meeting held of the employer group and of the union group, Mr. Kelly, on September 29, 1961.  
1268 At that meeting, did you ask the employer group to make a breakdown of its contract demands?

A. Yes, we did.

Q. What did you ask them?

A. Well, we had been in a series of meetings prior to that where we had made no progress, and in that meeting we asked them to give us something definite to work from.

We wanted to know what type of night operation they wanted; we wanted to know what about the female help; we wanted to know about ratios for female help; we wanted to know the price they would pay for night operation; we wanted to know about health and welfare, and various other things.

Q. Now, was a contract ratification meeting of Local 546 held on Sunday, November 26, 1961?

A. Yes, sir, it was.

Q. About how many members attended?

A. Upwards of three thousand, sir.

Q. At the 1959 meeting, about how many members attended?

1269 A. Approximately the same.

Q. Did you at this meeting review for the members the proposals and counter-proposals which had been made in the course of the 1961 negotiations?

A. Yes, I did.

Q. Did you inform the membership of the issues that they were to vote on, on that day?

A. Yes, I did.

Q. Would you please state what you told the members as to the issues they were to vote on?

A. We had three propositions that they would vote on, on that particular day. Two of the propositions had come from the Jewel. One had come from a majority of industry.

The first proposition from Jewel was a proposition that had to do with night operation on a 7-day, 24-hour per week basis.

The second proposition from Jewel had to do with the proposition that called for night operation on Mondays, Thursdays and Fridays.

And the third was the industry proposal.

1270 Q. Now, the first Jewel proposal, did that provide for night operation without employees on duty?

A. Yes, sir, it did.

By Mr. Dunau:

Q. Mr. Kelly, I show you Plaintiff's Exhibit 10, which is Jewel's 1961 proposal. On it, Jewel Offer No. 1 is stated, and then on the second page, Jewel Offer No. 2.

1271 Did you identify for the members Jewel Offer No. 1, and Jewel Offer No. 2, as stated on Plaintiff's Exhibit 10?

Mr. Christensen: I will object to that question simply for this reason, Mr. Dunau. I do not understand what you mean, did you identify for the members.

By Mr. Dunau:

Q. Did you explain to the members that these were the proposals made by Jewel Tea?

Mr. Christensen: Why don't you ask him to tell what he

did. I haven't objected to leading. We are trying to shorten this up, but I do object to a question in that form.

By the Witness:

A. In the contract agenda that I prepare for each of the special ratification meetings I write into it any letters that may have been received in the nature of offers.

In this particular meeting, I had written in ver-  
1272 batim the propositions extended by Jewel Tea to the union. These were read in their entirety to the membership in the meeting.

1273 Q. Did you put Jewel offer No. 1, as identified on Plaintiff's Exhibit 10, to the membership for a vote?

A. I did, sir.

Q. What was the result?

A. It was rejected.

Q. Did you put Jewel offer No. 2, as identified on Plaintiff's Exhibit 10, to the membership for a vote?

A. I did, sir.

Q. What was the result?

A. It was likewise rejected.

Q. Did you put to the membership the proposal which the employer group had agreed to?

A. Yes, I did.

Q. What was the result?

A. It was accepted.

Q. Did the other local unions conduct ratification meetings on November 26, 1961?

A. Yes, they did, sir.

Q. Was the same sort of communication between Local 546 and the other local unions carried on in 1961 as  
1274 in 1957?

A. It was.

Q. I show you what has been marked as Defendant Union's Exhibit 45, entitled, "Amalgamated Meat Cutters

and Butcher Workmen of North America, Local 546, special contract meeting on November 26, 1961", and ask you whether that is a copy of the minutes of the meeting held on that date?

A. It is, sir.

Mr. Dunau: I offer it in evidence.

Mr. Christensen: We take the same position as to the others.

The Court: The objection is sustained, but it may stand as an offer of proof.

1275 By Mr. Dunau:

Q. In 1961, after the conclusion of the negotiations, did you ask Mr. Charles Bromann to give you a list of his members that had authorized him to sign the agreement of 1961 on their behalf?

A. Yes, sir, I did.

Q. Did he give you such a list?

A. He did.

Q. How many names of employers were on that list?

A. 313 names on that list, sir.

Mr. Christensen: This is in '61?

Mr. Dunau: '61.

By Mr. Dunau:

Q. Was it important at that time to ascertain the number of employers that had authorized Mr. Bromann to sign an agreement on their behalf?

A. Yes, it was.

Q. Why?

A. Well, because in this particular contract we had gone into health and welfare for the first time, and in order for these employers to be properly covered  
1276 under the terms of our health and welfare it was required that we have signed copies of contracts from them. If Mr. Bromann was negotiating on their behalf

they gave him an authorization to that extent, and we accepted Mr. Bromann's total of 313 names as being properly authorized and signed for.

Q. Did the 1955-'56 agreement covering meat department operation in the Chicago area for the first time permit sale of frozen fresh poultry, cut up or whole, from self-service cases after 6:00 P.M.?

A. Yes, sir, it did.

Q. Would you please state the reason for that agreement at that time?

A. We had had a tremendous demand from the employer group for the right to sell poultry, frozen poultry, after the closing hour of 6:00 P.M., seeing at the time that they were in direct competition with papa and mama stores and delicatessen stores, where these items could be purchased; and in fairness to the employers who were employing meat cutters that we represent, we felt that they had the same privilege, should have the same privilege, and we 1277 agreed to give them that right.

Q. Did the 1957-'59 agreement for the first time permit the sale of fresh poultry, cut up or whole, processed on the premises from the self-service cases after 6:00 P.M.?

A. Yes, sir, it did.

Q. What was the reason for that agreement?

A. Well, the sale of frozen poultry had made such inroads into the market, and particularly from 6:00 to 9:00, that sale of fresh poultry, of course, would be done by the members that we represent, was slowly but surely dying on the vine. In order to keep that work, that of course is what we are interested in, we gave them the right to sell fresh cut up poultry that was processed on the premises at night as well.

1278 Q. Do the agreements provide that at the employers' discretion overtime and overtime rates may be worked after eight hours in any one day and behind locked doors after 6:00 P.M.?

A. Yes, sir.

Q. What is the occasion for working behind locked doors after 6:00 P.M.?

A. Well, there is a variety of reasons actually. There are some independent stores that have order trade, where orders must go out early in the morning, say 7:00 o'clock, 8:00 o'clock in the morning, and they require that the meat be cut the night prior and be ready to deliver the following morning.

There are those stores that require, because of a late delivery of merchandise, that meat be prepared that night. There is the time when a sale, special sale, might occur the following day and that would create a requirement for work that night. There is a variety of reasons in that regard, sir.

Q. Is there much overtime work performed after 6:00 P.M., as the result of this privilege?

A. No, sir. Practically none.

1279 Q. What is the basis for the union's opposition to night marketing hours?

A. That our membership don't want to work; that they would prefer being home with their families.

Q. How do you know that the butchers do not want to work at night?

A. Well, it has been a historical thing since I came with this organization. I was employed by them back in 1931. This was a tradition of the organization, that they did not want to work at night. Since I have been the secretary they have made themselves known many, many times in voice votes in our meetings, in our contract meetings, as late as last July, in health and welfare meetings, and in the case of Jewel just as far back as a matter of weeks ago, in the balloting that we took.

Q. Now, you mentioned a health and welfare meeting in 1962. Was such a meeting conducted among the employees of Jewel Tea Company?



A. Yes, it was.

1280 Q. What was the purpose of that meeting?

A. The purpose of that meeting was, as per contract, to give these members the option to elect whichever plan they care to be covered by, whether it would be by the company plan of hospitalization, or whether it be by the new union plan.

Q. And what was the vote of the Jewel employees on this question?

A. On the health and welfare question?

Q. That is correct.

A. The Jewel employees saw fit to retain the Jewel program.

Q. After the voting on the health and welfare plan, did something happen pertaining to the subject of market operating hours at this meeting?

A. Frankly, it was before the vote took place. Yes, it did.

Q. What happened before the vote took place?

A. Well, the union wanted to know the feelings of the Jewel employees, and it is seldom, if ever, that we get that many union meat cutters from Jewel under one roof.

We had in excess of 1100 meat cutters in that hall 1281 that day. We thought it would be a desirable time to get the sentiments of the people regarding night operation. We—myself, together with our attorney, brought them up to date on the progress of the litigation—

Mr. Christensen: Now wait. I am going to object to bringing up to date these conclusionary statements. It is bad enough as it is.

By Mr. Dunau:

Q. Please state what you said at that meeting?

A. We gave them a run-down of our present status in regard to night operation. We wanted to know whether or not they still felt as we thought they felt, and we wanted

their sentiments in that regard. We asked them to give us a voice vote as to whether we should forget the suit we were going into and sit down across the bargaining table again and see if we couldn't work out some program that would be of mutual benefit to both parties.

We took a voice vote. We asked if they wanted night work or didn't want night work. There was a unanimous  
1282 no, that they did not want night work.

Q. Would butchers be able to earn more money if they worked at night?

A. Up to a point, yes, sir.

1283 Q. Do the local unions oppose the operation of a service meat department, service after 6 P.M., without employees on duty?

A. Yes, they do.

Q. What is the basis for that opposition?

A. Because in our opinion they cannot operate without people on duty.

Q. And why do you have that opinion?

A. Well, there must be somebody on hand to take care of the counter, for the disarrangement that takes  
1284 place in normal sale, and for the restocking and replenishing, for the cleaning of the cases, for the custom cutting that is required. And without it we don't think it can be done.

Q. Are there certain delicatessen items which are, may at present be sold after 6 P.M. in a self-service meat department?

A. Yes, there are some.

Q. What has been your experience with the sale of these delicatessen items after 6 P.M. without employees on duty?

A. We gave the employer the right to operate these certain delicatessen items beyond 6 P.M. with the feeling

that they would stock their cases and the cases would remain so until the closing hours of the market. We find that this is not the case. We find that in practically all cases that at some time during the course of the evening hours that that market is open, that somebody from the grocery department, the grocery clerk, the assistant manager, the manager himself, is rearranging and restocking the cases.

Q. Is there a question of work load involved in the opposition to operating a self-service meat department without employees on duty?

A. Yes, there is.

Q. Would you please explain that?

1285 A. Well quite truthfully, there would be an added work load each morning when people came back to work. They would have all the necessary work that would go into putting that counter back into proper shape, pulling out items that shouldn't be there.

There would be an added work load on Friday evening, on Friday afternoon, for Friday evening sales, that our people would get.

1286 By Mr. Dunau:

Q. Does the relationship of the service market to the self-service market play a part in the union's opposition to operating a self-service meat department, without employees on duty after 6 P.M.?

A. Yes, it does.

Q. What is that?

A. Well because one is competitive against the other. That if a self-service meat department were open at night without benefit of help it would become necessary that the service market be open likewise. The only possible way a service market can operate is with help.

Q. Would there be a loss of work from the service market to the self-service market, if the service market could not operate after 6 P.M. but the self-service market did?

A. Yes, there would not only be a loss of work; there would be a loss of employment for those people in that service market.

1287 Q. Now, other than the offer made by Jewel Tea which is in evidence as Plaintiff's Exhibit 10, which I show you, have you ever had an offer from Jewel Tea or any other employer for the operation of a self-service meat department without employees on duty?

A. No, never before.

Q. Mr. Kelly, did you in the course of the 1957, 1959 and 1961 negotiations, state that market-operating hours is a negotiable issue?

A. Yes, sir, I did.

Q. What did you mean by that?

A. Well, in the opinion of myself and all of the locals, anything is a negotiable issue. Marketing hours, I presume that if the proper provision were offered for the right to work, for the work that would be entailed, there would be some possibility of having it.

Q. Did you at the November 2, 1961 negotiating meeting, state in answer to a hypothetical question that to negotiate night hours on a limited basis of three 1288 nights a week is unrealistic and would be conspiring with a group of employers to limit operations to certain nights and hours?

A. Yes, I did.

Q. Did you make that statement for the sake of argument basis?

A. No. No, I did not.

Q. Did you make that statement accepting the assumptions that Mr. Vorbeck was stating to you?

1289 A. Yes, I did.

Q. In the 1961 negotiations, did you have any understanding or agreement with any employer that you would insist on maintaining opposition to night-operating hours?

A. No, sir.

Q. In any previous negotiations, did you have any understanding or agreement with any employer that you would insist on maintaining opposition to night-operating hours?

A. No, sir.

Q. To your knowledge, in the 1961 negotiations, did any other representative of the local unions have any understanding or agreement with any employer to insist on maintaining opposition to night-operating hours?

A. Not to my knowledge, sir.

Q. In the negotiations preceding 1961, to your knowledge, did any representative, any other representative of the local unions, have an understanding or agreement with any employer to insist upon maintaining opposition to night-operating hours?

A. Not to my knowledge.

Q. Do you formulate your position on the subject of night-operating hours based exclusively upon what you regard to be the best self-interest of the members?

A. I certainly do.

Q. To your knowledge, do other representatives of the local union base their position about the subject of night-operating hours, based exclusively upon what they regard to be in the best self-interest of the members?

A. Yes, they do, sir.

1291 Q. In 1957, how many stores did Hillman operate?

A. I would say ten, sir.

Q. How many self-service?

A. Approximately seven.

Q. And were the remainder service?

A. Yes, they were.

Q. At the present time how many stores, meat departments, does Hillman's operate?

A. It is my belief they are now a self-service, with the exception of one.

Q. How many are there?

A. I believe there are thirteen now, sir.

Q. When you gave us the figure of 10 in 1957, were you referring to stores in which meat departments operate?

A. Yes, sir.

Q. In 1957, how many stores did Goldblatt's operate in which meat departments were open?

A. I would say approximately nine.

Q. How many were service?

A. They were all service.

Q. Has Goldblatt's since gone out of the operation 1292 of the meat departments?

A. Yes, sir. They have.

Q. In 1957, how many stores did Safe Way operate with a meat department?

A. I believe only one, sir.

Q. Was it service or self-service?

A. It was self-service.

Q. At the present time how many stores with meat departments does Safe Way operate?

A. Two, now.

Q. Are they both self-service?

A. Yes, they are.

Q. Is Safe Way a member of Associated Food Dealers?

A. Yes, they are.

Q. In 1957, how many meat departments did Pick and Save operate?



A. I would say approximately seven, sir.

Q. Were they service or self-service?

A. They were all self-service.

Q. At the present time how many meat departments does Pick and Save operate?

1293 A. I believe approximately ten now.

Q. Are they service or self-service?

A. They are all self-service.

Q. Is Pick and Save a member of the Associated Food Dealers?

A. Yes, they are.

Q. In 1957, how many meat departments did Mayflower operate?

A. One, sir.

Q. Was it service or self-service?

A. Self-service.

Q. At the present time how many meat departments does Mayflower operate?

A. Two, now.

Q. Is it service or self-service?

A. Both self-service.

Q. Is Mayflower a member of Associated Food Dealers?

A. Yes, they are. But the Associated Food Dealers does not sign their contract. They sign them themselves.

1294 Q. Does the membership of Associated Food Dealers include employers who operate one food store?

A. Yes, sir.

Q. Do some of those employers who operate one food store operate a self-service meat department in that store?

A. Yes, they do.

Q. Do other employers who operate one food store operate a service meat department in that store?

A. Yes, they do.

Q. Do some members of Associated Food Dealers operate more than one store?

A. Yes, sir, they do.

Q. Of those members who operate more than one store, did some of them operate all their meat departments on the self-service basis?

A. Yes, sir, they do.

Q. Do others operate their meat departments, some on a self-service basis and others on a service basis?

A. That's right, sir, they do.

Q. Do you know of any employers who are members of Associated and operate more than one store that  
1295 operate other meat departments on a service basis?

A. at the present time?

Q. Yes?

A. Yes, sir, I do.

Q. If members of the defendant unions went out on strike would they be without earnings for the duration of the strike?

A. They would be without some income for at least the first two weeks of the strike.

Q. What would happen at the end of the first two weeks?

A. Well, our International union has a strike fund that takes effect in the third week of any strike that has been sanctioned by the International Union.

1296 Q. What is the amount of the strike benefit?

A. \$20 per week, sir.

Q. In 1957 what was the rate of pay of a journeyman meat cutter?

A. I would have to hazard a guess at that. I believe approximately \$117 weekly.

Q. Could a meat cutter find employment as a meat cutter in other places while he was on strike against his own employer?

A. No, sir.

1298

*Cross-Examination by Mr. Christensen.*

Q. Mr. Kelly, I understood you earlier this afternoon to testify that before the year 1941, that Local 546 did the bargaining with whatever employer or employer groups it was bargaining with at that time, and that what was done or accomplished in the bargaining was passed on to the other locals. Am I correct?

A. Yes, sir.

Q. You testified also that beginning, at least in the year 1931, and you don't know how much earlier, the terms of all meat cutter labor contracts in the Chicago area were identical?

A. I don't recollect that, sir.

Q. Well, let me ask you as a fact then, were they identical?

A. I will say that inasmuch as wages and working conditions were concerned, there was a possibility of there being a variance.

But as far as the closing hours and opening hours, they were identical, yes, sir.

1299 Q. Oh, well this is what I didn't understand, because you also said that in 1941 some of the locals had fallen behind, was the note I made here.

A. Yes, sir.

Q. I didn't understand how the terms could be identical and yet some had fallen behind. It is your impression that perhaps prior to 1941, 546 had a little better wages or better working conditions than some of the others, is that what I am to understand from your testimony?

A. It is not my impression, sir. I know that's true, that is the case.

Q. And your testimony as to the terms being identical was restricted solely to market-operating hours?

A. That is right, sir.

Q. The only ratification meetings pertaining to the 1957, 1959 or the 1961 contracts that you attended and have personal knowledge of, are the ratification meetings of Local 546, isn't that so?

1300 A. Yes, sir, that's right.

Q. You testified a little bit ago about a representative of National Tea coming to you after the 1957 strike vote had been taken, came to your office and talked with you?

A. No, sir, I didn't say that.

Q. Well, what—

A. He contacted me by telephone, sir.

Q. By telephone?

A. Yes.

Q. I misunderstood you. And that was Mr. who?

A. Mr. Robert Cone.

Q. Mr. Robert Cone?

A. Yes.

Q. He told you that National Tea would not litigate with you?

A. Yes, sir; that's right.

Q. And they were going to sign the contract?

A. Yes, sir.

1301 Q. With a night restriction on it?

A. Yes, sir.

Q. But I made a note here that your testimony was he said they were prepared to take a strike?

A. That is correct, sir.

Q. Well, Mr. Kelly, I have difficulty following. They are prepared to take a strike, but they weren't going to take a strike, they were going to accept the contract.

Now, the conversation—I just don't understand it.

A. Maybe I can explain it clearer, Mr. Christensen: They had been prepared to take a strike, but they made a decision to accept the contract.

Q. Oh, they changed their mind and were not prepared to take a strike and accepted the contract?

A. That is right. That is right, sir.

Q. Now, in the year 1961, you required Mr. Bromann, or asked him, to give you a list of the employers who he was authorized to sign for?

1302 A. Yes, sir.

Q. Then did he sign contracts in the name of Associated for those three hundred and thirteen employers?

A. Well, a single signature on the part of the Associated would cover all three hundred thirteen, because they had authorized his signature, sir.

Q. And that is the practice you had followed with Associated for a good many years, was it not?

A. Yes, it was.

Q. And only in this instance, because of the advent of the pension and welfare—or the Health and Welfare, I beg your pardon—you wanted an accurate list of those who were covered by it?

A. That is right, sir.

Q. And Bromann has signed the '57 contract and the '59 contract, as well as the '61?

A. Yes, sir, he had.

Q. In the name of Associated?

A. Yes.

Q. You testified this afternoon that the union 1303 changed its position as to the sale of poultry, because of competition in that from delicatessen stores and places where butchers did not work.

Your were losing the sale of fresh poultry because frozen poultry was setting in?

A. I don't believe I said that, sir.



Q. I don't mean to misquote you.

A. Would you re-address your question, please?

1304 Q. You testified this afternoon with respect to your reasons?

A. Yes, sir.

Q. For permitting the night sale of frozen poultry from self-service case?

A. Yes, sir, I did.

Q. Now, if I have misunderstood your reasons, please state them again?

A. We were in—we were in request from the employer to give them the right to sell this poultry because it was being sold as frozen poultry, by delicatessens and small "Pop and Mama" stores who were in direct competition to them. We felt in fairness to these employers who were employing the union membership that we represented that they should have such a right. This is the reason they have the sale of frozen poultry.

Q. And they could get that right from you? That was a right you could give or withhold?

A. I believe it was a part of negotiations, sir.

Q. Now, do you now permit the sale of fresh poultry at night?

1305 A. Yes, sir, we do.

Q. And that is for the same reason, essentially?

A. Well, actually, because frozen poultry had made such inroads into the fresh poultry market as far as our meat cutters were concerned, they were losing certain of their work, and in order to keep their work, we permitted the sale of fresh poultry if it were processed on the premises.

Q. Now, do you know what a TV dinner is?

A. Yes, sir.

Q. What is it?

A. Well, if you mean have I eaten it, I can't say I have. I have seen—



Q. I didn't ask you that. You said you knew what it was?

A. Yes, sir.

Q. Please tell me what it was.

A. It is a frozen dinner, sir.

Q. It contains meat, does it not?

A. Yes, it does.

Q. And have you made any survey as to the quantities of these TV dinners that have frozen meat in them  
1306 that are being sold by the major chains in the last few years?

A. No, sir, I haven't.

Q. That meat is not cut by butchers on the premises, is it?

A. It is a precooked meat, sir, and that is the reason they are permitted to sell them as they are.

Q. Please answer my question.

A. No, apparently not, sir.

Q. And, of course, one of the alternatives for a purchaser who wants a little meat, can't buy it at night, is to buy a TV dinner that is sold out of a different case by grocery clerks, isn't that right?

A. I would imagine so, yes, sir.

Q. And to the extent that goes on and you are refusing to let Jewel meet that competition, you are taking work away from your own members, are you not?

A. No, sir.

Q. You are not? You don't see the similarity between that and the poultry situation?

A. No, sir, I don't.

1307 Q. No connection?

A. I don't think there is.

Q. You don't see it at all?

A. No, sir.

Q. Now, you have testified about the added work load.

Isn't it a fact that the work load of any individual butcher in a store remains fairly constant, it is not a precise science, and that as volume increases butchers are added or subtracted from the staff?

A. Up to a point, sir, yes, you are right.

Q. In 1950, there was no self-service of meat in the Chicago area, in any of these locals, was there?

A. No, sir.

Q. Approximately how many members did Local 546 have in the year 1950?

A. I would say approximately 40 to 100 members, sir.

1308 Q. In 1961, how many members did 546 have?

A. Retail members, we had approximately the same figure. We added the A&P meat commissary to our membership with another 250.

Q. And in the ten or eleven year interval, can you express any judgment as to the proportion of your membership that came to work in self-service markets?

A. I don't understand your question, sir.

Q. Well, all right.

You have between 4500 and 5000 members?

A. Yes, sir.

Q. Pretty close to 1500 of them are employed by Jewel, are they not?

A. Not in this particular local that you are speaking of.

Q. Well, I beg your pardon.

Approximately how many of that local's members are employed by Jewel?

A. I would say 700, sir.

Q. 700. And of those 700, approximately how  
1309 many of them work in service stores?

A. For Jewel?

Q. For Jewel.

A. I suppose you could count them on your hand.

Q. I would think so.

A. Yes.

Q. Now, roughly the same proportion obtains as to the other major chains, does it not, that the great bulk of them work in self-service meat markets?

A. That would be an approximate idea, yes, sir.

Q. And the advent of self-service meat markets in the Chicago area has not diminished the work of your members, has it?

You are bigger and stronger and wealthier today as a local than you ever were, is that correct, Mr. Kelly?

1310 A. I would say yes, sir.

By Mr. Christensen:

Q. Mr. Kelly, you expressed the opinion that market operating hours was a negotiable subject so far as you were concerned or I assume so far as your local was concerned. Am I correct?

A. Yes, sir, you are.

Q. You also said that you presumed that for a sufficient amount of money an employer could buy nearly anything, any operating hours, or words to that effect, did you not, this afternoon—

A. Somewhat in essence, I did say that.

Q. Well, if that isn't the sense of it, you state it the way you think it should be stated?

1311 A. I think I stated along somewhat similar lines that if the money involved was sufficient that certainly people have a way of changing their minds.

Q. All right. Now, at one time they offered you 25 or 50 cents a night. You said that was too low. Isn't that correct?

A. Yes, sir, I did say that.

Q. At another time, you were offered time and a half?

A. No, sir.

Q. You have never been offered time and a half?

A. We have been offered time and a half but if you will really look at this offer as it was made to us, it only represents half time, sir, not time and a half.

Q. You mean they wanted people to work for less money after 6:00 o'clock?

A. No, sir. These people would have obtained straight hour work rates no matter when they worked. They offered time and a half, so to us it was half time. It wasn't true time and a half. It was based on a flexible work day, sir.

1312 Q. Well, you had an offer after this trial started for time and a half, didn't you?

A. Yes, we had some offer—we had an offer for time and a half; that's right, sir.

Q. And didn't you express an opinion two or three years ago that an offer of time and a half in your judgment was no good because it was so high a premium that market operators would cheat on it and induce some of your members to get more work to kick back or not to take time and a half?

A. I never said that.

Q. You never said that?

A. No, siree.

Q. Well, do you think that time and a half then is not too high a premium, is a fair premium for work after 6:00 o'clock.

A. If it is true time and a half, yes, sir.

Q. That's a fair premium?

A. I would think so. I don't know whether I can convince the membership we represent on that.

Q. Now, as I understand two or three sweeping  
1313 answers you gave at the tail end of your examination, you never had an understanding or agreement with

any employer that you would insist, you, Local 546, would insist on opposing or maintaining opposition to night market-operating hours?

A. Did you say an understanding with another employer?

Q. My notes show, and I tried to copy it down as best I could, you never had an understanding or agreement with any employer that you would insist on maintaining opposition to night market-operating hours?

A. That is correct, sir. I never did.

Q. But you have consistently taken the position that the entire industry or the great majority of it had to go along on a program or you would not agree to any night market-operating hours, isn't that also correct?

1314. A. No, that is not correct, sir.

By Mr. Christensen:

Q. That is not correct?

A. No, sir.

Q. And you didn't take the position that it was unethical or improper for Jewel to make its separate offer and to stand out against the rest of the industry?

A. I, personally, thought it was unethical, yes, sir.

Q. Mr. Kelly, to go back to the year 1957, and there has been testimony here and I think you were in agreement that on November 1st of 1957 Mr. Morse and Mr. Vorbeck of the Jewel Company called upon you at your office and discussed the situation with you and made you an offer?

A. I don't believe I have said anything about that, sir.

1315. Q. I didn't say that.

A. Oh. Are you posing the question to me?

Q. Yes. I am trying to direct you to the episode, that's all.

A. I believe there was an occasion such as that.



Q. So you can get it in context.

A. Yes, sir.

Q. Now, I am going to ask you about that particular conference or meeting.

Pardon me, I withdraw that. I was in error. I have got the wrong time.

I want to refer you to the meeting of October 22, 1957, at the Bismarck Hotel—no—November 1st meeting at the Bismarck Hotel.

Do you recall that the private meeting you had with Morse and Vorbeck was at your office and after you had that discussion you suggested everybody go over to the Bismarck, where the general meeting was in effect?

A. I have a recollection of such a meeting, sir.

Q. All right.

1316 Now then, at that general meeting, do you recall that you had a—in a break period or a private caucus you and Mr. Neilubowski had with Ed Vorbeck and Mr. Morse, in which you and Mr. Neilubowski said that you couldn't recommend the Jewel offer because it contained two conditions which you regarded as unlivable, the first being the provision Jewel wanted for female wrappers and the second being the absence of time and a half provision for work after 6:00 P. M. and also after forty hours?

A. No. Quite frankly, I can't recollect that.

Q. And that you then expressed the opinion that the time and a half was not good for your membership because you were well aware that if an employer had to pay such a high price for additional work, there would either be no additional work or if there was, it would be scabbed at straight time.

A. I can't remember having said that.

1317 Q. Can you take your oath you did not say it?

A. I would be inclined to take an oath I did not say it, sir, yes.



1318 Mr. Dunau: If your Honor please, the only things that we have remaining, subject to a check, are some exhibits which I would like to introduce at this time.

Defendant Union's Exhibit 8, which is a stipulation pertaining to the number of self-service markets and service markets and the number of employees in each as to designated employers, was previously offered and ruling was reserved. At that time objection was made that the information was not complete.

We have through the testimony of Mr. Kelly and Mr. Vorbeck, given the information as to every other employers who has been identified in the course of the negotiations.

The Court: Have you seen this, Mr. Christensen?

Mr. Christensen: No, I have not. I assume it is the same format as you had before.

Mr. Dunau: Well, it is what has been offered in evidence before.

The Court: Is there any objection now?

1319 Mr. Christensen: No objection.

The Court: It is admitted.

Mr. Christensen: What is your number, Mr. Dunau?

Mr. Dunau: It is Defendant Union's Exhibit 8.

(Said exhibit, so offered and received in evidence, was marked DEFENDANT UNION'S EXHIBIT 8.)

Mr. Dunau: Would you mark this Defendant Union's Exhibit 46 for identification please?

(Said document was marked Defendant Union's Exhibit 46 for identification.)

Mr. Dunau: If the Court please, there was previously received in evidence as Defendant Union's Exhibit 4 a tabulation as to the number of stores in 1961 of Jewel Tea in which fresh meat was sold in 1961.

I have an identical tabulation for 1960 with respect to the stores selling fresh meat after 6 P. M. in that year. I offer

that in evidence on the same basis as the Defendant Union's Exhibit 4 which was previously received.

Mr. Christensen: What was this made from?

Mr. Dunau: This was made from—the figures 1320 were taken, the sales WPS, and earnings, were taken from Defendant Union's Exhibit 35, which was furnished to us by Jewel Tea.

The identification of stores in which fresh meat was sold after 6 P. M. were taken from Plaintiff's Exhibit 16 and Plaintiff's Exhibit 13 and 13-0, which were likewise information furnished by Jewel Tea.

Mr. Christensen: Well, your Honor, this is simply a confirmation. It is an argument, I think, rather than an exhibit.

We have no objection to it subject to correcting it for clerical accuracy. I assume it is correct, but I would like to—

The Court: It is received.

Mr. Dunau: It is as correct as I can make it.

Mr. Christensen: What number is that?

Mr. Dunau: That is 46.

(Said document, so offered and received in evidence, was marked DEFENDANT UNION'S EXHIBIT 46.)

Mr. Dunau: Would you mark that Defendant Union's Exhibit 47 for identification?

(Said document was marked Defendant Union's 1321 Exhibit 47 for identification.)

Mr. Dunau: Defendant Union's Exhibit 47 is a comparison of the 32 stores in 1960 which sold fresh meat after 6 P. M., with the divisions of the stores in which no fresh meat was sold after 6 P. M., and in all the stores in which no fresh meat was sold after 6 P. M.; it is identical with Defendant Union's Exhibit 5 for the year 1961, except for the addition of the compilation of all stores in which no fresh meat was sold after 6 P.M. On the exhibit there

is identified the material from which it was taken and the method used to obtain it.

1322 Mr. Christensen: Your Honor, this is a complicated accounting exhibit, if you look at it on its face.

I would think this should be supported by some testimony, if there can be any, as to the statistical accuracy of the method employed and what it tends to prove, if anything.

We have not subjected—

The Court: Well, is there any evidence in the record that would be the basis for this?

Mr. Dunau: All the evidence in which this exhibit is based is in the record, your Honor, and identified on the exhibit—the exhibit identifies the other exhibits from which this information is taken.

Mr. Christensen: Well, what they do, the basic data, according to the face of the document, and I assume it is being offered in any event subject to our checking it for accuracy, they divide up earnings and then they make, show percentages of earnings for sales of meats.

Then they pull some out and divide by 216, and the resultant is divided by 52 to give the sales per week for all stores not selling fresh meat after 6:00 p. m.

1323 There are too many steps with playing with these figures and coming up with results. I cannot tell whether the 32 stores are taken out of the divisions or are not in the divisions.

This needs a statistician and an accountant to explain it. We should have a witness on the stand that we can cross examine at some length as to this particular document. This is not a simple document.

Mr. Dunau: If you Honor please, it needs no statistician, mathematician or any other type of arithmetical genius. This is identical with Defendants' Exhibit 5, which is already in evidence.

The first column, "Thirty-two stores in which fresh meat is sold," those are taken from Defendant Unions' Exhibit 46, which is already in evidence.

The figures under divisions 2, 3, 4, 5 and 6, are taken straight from the plaintiff's own exhibits, without any compilation of any kind.

The last figure, the last column, "All stores in which no fresh meat sold after 6:00 P. M." is a compilation based upon figures taken from plaintiff's own information, 1324 and it is a very simple kind of a thing.

The Court: Well, suppose the Court receives it subject to your objection, have your accountant check it, analyze it and check it against these other exhibits as counsel said?

Mr. Christensen: Well, of course, Judge, that is a possible way of doing it. But it casts a burden on us of trying to decipher what is going on, instead of putting it as we think it should be, upon the proponent of the document to stand up and tell what he has done about it.

Mr. Dunau: Well, I was about to explain just exactly what was done with it. It requires no witness, because it is simply an explanation based on the use of your own witness:

You take from your report, 3-F, which shows you the total sales per week per store. That figure of 352,633,819, is drawn from defendant Unions' Exhibit 3-F.

That figure is reduced by 782,841, and that is taken from defendant Unions' Exhibit 46, already in evidence, and represented the sales of those stores in which fresh 1325 meat was sold after 6:00 P. M.

The difference therefore is the sales in those stores in which no fresh meat was sold after 6:00 P. M.

There were 216 such stores. You divide the total of sales by 216, and that gives you the total sales for each store in which fresh meat was not sold after 6:00 P. M.

Now, to get it per week per sale, you simply divide that from 52, and it is pretty obvious there are 52 weeks in a year. In any event that is also taken from information provided by the plaintiff.

The same compilation is made with respect to earnings.

Mr. Christensen: Well, Judge, look at the document. I still don't understand it. I may be unduly dense.

I see no Division 1, here. I don't know what he has done with Division 1.

1326 Mr. Dunau: Division 1 is excluded, because in Division 1 you—

Mr. Christensen: Well, I—

Mr. Dunau: Let me explain it, Mr. Christensen.

Mr. Christensen: I say, this is a partial segregation of figures, your Honor. We should have a statistician, and I should not be in an argument with counsel about it.

Let him put somebody on and explain it, if he can. This is no simple thing. This is a selection of some figures that they have made up, some figures we furnished them, and then a fertile mind has gone to work on it.

The Court: Is there anybody here who made this up?

Mr. Dunau: I made it up, your Honor. I am willing to explain every step in the process.

All that is necessary is to determine the validity of this process. There is no point in questioning witnesses for the purpose—as I said when we had the argument on

Defendants' Exhibit 5 for the year 1961, which is in 1327 evidence, the only difference—this is virtually the same thing for the year 1960, except that I have done the arithmetic with respect to all the stores.

If I were not to offer it in evidence but to append it as an exhibit to a brief stating this is what can be inferred from the information already in, there wouldn't be a possible basis for objection to that argument.

The only basis would be an objection to the validity of



the argument. But we do it this way. It is more convenient.

Mr. Christensen: Mr. Dunau, you tell me in one breath it is all the stores, and in another breath you have left the Division 1 out altogether.

Mr. Dunau: If you let me explain it, there is no mystery. Division 2, 3, 4 and Division 6 are all stores in which no fresh meat were sold after 6:00 P.M.

The information as to those stores was taken straight from defendants—from Jewel's own information.

1328 Now, when I go to all stores, then I have to do a little more arithmetic, because all stores would include also Division 1, in which there are some stores which sell meat after 6:00 P.M., Division 7, in which there are some stores that sell meat after 6:00 P.M., and Division 8, in which there are some stores that sell meat after 6:00 P.M.

We know the total of the stores. We know those stores in which no meat was sold after 6:00 P.M.

We also know the stores in which meat was sold after 6:00 P.M.

It has been a simple process of arithmetic to add up—well, it takes from our information—you have given us, in your own exhibit, the information with respect to the total sales.

Already in evidence is the information with respect to the sales of the thirty-two stores which were open after 6:00 P.M.

You subtract it and inexorably you get the information from sales in the stores which were not open after 6:00 P.M.

1329 We know the number of those stores. So we divide by that number, and that gives us the number of sales referable to each store which does not sell after 6:00 P.M.

We also know it is a 52-week operation, so it doesn't



take much arithmetic to divide that and get PWPS for each store.

Mr. Christensen: Your Honor, perhaps I can state my objection:

We furnished them our report showing Jewel Food Stores sales and earnings, comparative statement for the years 1960 and 1961. We showed that in the year 1961 that the total average company per week per store, and the company total, was 4.6 in 1961, a decrease from the year 1960, which had been 4.9.

Now, in one of these documents, which counsel has made up, his Defendants' Exhibit 5, he adopts our figure of 4.6. But he has brought it down from what is in here, and here comes up with a new figure of 4.8.

1330 None of his figures jibe with what he has taken it from, and it is impossible—

Mr. Dunau: It would be—

Mr. Christensen: Just a minute now, I didn't object at all when you made that long speech.

It is impossible, without having a witness, and I don't want to stand here and argue with my brother lawyer indefinitely; we think we are entitled to have a witness on the stand that can be cross-examined as to how these statistical marvels take place.

Mr. Dunau: There is no statistical marvel, your Honor; if you compare 1961, Defendants' Exhibit 5, with 1960, you are sure going to get different information.

What's the reason for comparing them?

1331 Mr. Christensen: Because you come up with different answers. You show our profits going up, when they went down.

The Court: I think I will have to sustain the objection, counsel.

Mr. Dunau: If your Honor please then, may this be received, excluding the compilation on the last column,

because this is the only thing in which any arithmetical matters which are different from what is already in evidence have been contained.

The Court: What do you say as to that?

Mr. Christensen: Well, it is again a partial thing. Frankly, Judge, I may be dense, but I don't understand this.

The Court: All right, the objection stands. I mean the ruling stands.

Do you have any others?

Mr. Dunau: Yes, sir, I do.

If your Honor please, may this be for the purpose of keeping the record in some sort of coherent order, received as an offer of proof?

The Court: It may.

1332 Mr. Dunau: Then, if I understand it, Defendant Unions' Exhibit 47, the comparison pertaining to 1960, is received as an offer of proof.

Would you mark this Defendants' Exhibit 48, please.

(Said document was marked Defendant Unions' Exhibit 48, for identification.)

Mr. Dunau: Defendants' Exhibit 48 is an identical compilation for the year 1959, with respect to the stores which sell meat after 6:00 P.M., as has already been received in evidence with respect to the years 1960 and 1961.

Mr. Christensen: No objection to that.

The Court: It is admitted.

(Said document marked DEFENDANT UNIONS' EXHIBIT 48, for identification, was received in evidence.)

Mr. Dunau: Mark this as Defendant Unions' Exhibit 49, please?

1333 (Said document was marked Defendant Unions' Exhibit 49, for identification.)

Mr. Dunau: Your Honor, Defendants' Exhibit 49, which I offer, is a comparison for the year 1959, of the same type

which was offered for the year 1960, as to which an objection was sustained and it was received as an offer. I presume therefore there should be the same disposition with respect to this exhibit.

The Court: Received as an offer.

1334 Mr. Dunau: Mark this as Defendant Unions' Exhibit 50, please.

(Said document was marked Defendant Unions' Exhibit 50, for identification.)

Mr. Dunau: Defendant Unions' Exhibit 50, for identification, is a comparison for the year 1958, of the stores selling fresh meat after 6:00 P.M., as against stores not selling meat, for the year 1958. The footnotes explain the basis upon which this computation was made.

1335 Mr. Christensen: Again, your Honor, this appears to be, and I assume you brought the subject for our right to object to the figures, but this appears to be just a selection of stores that didn't sell meat with those that did, irrespective of size, volume, or other conditions.

The statistical validity of it is then established by no one, if that proves anything as to the effect of night sales, because of the various factors we all know are involved. I think that merely clutters the record.

One can take a complicated set of drawings and take portions of them and go on ad infinitum. We are up to fifty exhibits now, and I think counsel is just cluttering the record.

I am perfectly willing to have him make whatever showing he can make, but I don't think it helps anybody. I must object to it.

Mr. Dunau: The specific reason was that there are stores that sell meat after 6 P.M., and stores that do not sell meat after 6 P.M. That is precisely the objection we pointed out on Plaintiff's Exhibit 13, that they select 1336 nine stores that sell meat after 6 P.M., they give

us a history between before and after, because of a change of hours, and they take those nine and compare them with all other stores and say that it is valid.

Then we come and make the same assumption they make and compare all stores in which meat was not sold after 6 P.M. with all stores in which meat was sold after 6 P.M., suddenly the assumption on which plaintiff acts becomes invalid when the defendant adopts it.

Mr. Christensen: I find it difficult to believe that as intelligent and alert a man as Mr. Dunau can be as confused as he is. This exhibit, your Honor, is utterly different from the ones that Counsel is talking about. In effect, what we were doing is comparing a store, with all its weaknesses and all its strengths, against itself in a period that you could make, as against comparable performance in the chain.

We are comparing like with like. For Counsel to assert to the Court that the statistical basis of this is 1337 the same as this one displays a lack of comprehension on Mr. Dunau's part that I find difficult to believe.

The Court: The Court will sustain the objection and receive it as an offer of proof.

Mr. Dunau: Very well, your Honor.

Your Honor, subject to a check of this mass of papers to be sure I haven't left out something that should be in, we have rested.

The Court: The defendant rests.

1338

Thursday, November 29, 1962,  
10:00 o'clock, A. M.

Court convened pursuant to adjournment.

1339 The Clerk: 58 C 1415, Jewel Tea Company vs. Local Union 189.

The Court: Proceed, please.

Mr. Christensen: Are you resting?

Mr. Dunau: Yes, I am resting.

Whereupon the defendants rested their case.

1340 And thereupon the plaintiff to further maintain the issues on its part, introduced the following evidence in rebuttal, to-wit:

JAMES VICTOR BRODNICKI, called as a witness on behalf of the plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

*Direct Examination by Mr. Christensen.*

Q. Mr. Brodnicki, you are the same James Brodnicki previously sworn and examined in this case?

A. Yes, sir.

Q. I hand you a document marked Plaintiff's Exhibit 21, for identification, and ask you if that is a Xerox reproduction of an accounting sheet which you have prepared?

A. Yes, sir.

Q. It is headed, "Comparison of near and far stores which sell meat at night for year 1961." Did you  
1341 devise that title?

A. Yes, sir.

Q. Then in the left-hand column appears the letter A,



indicating a sub-classification, "Closest stores to Melrose", and further down B, "Furthest stores from Melrose."

What is that Melrose?

A: Melrose is our headquarters office, and it is also our primary supply warehouse.

Q. That is Melrose Park, Illinois?

A. Yes, sir.

Q. Now, did you take the 33 stores that sold meat at night and just divide them into two classifications by district, split them right down the middle?

A. Yes, sir, the near and far from Melrose.

Q. And because there were an odd number of 33, you couldn't quite split them in the middle. There are 16 stores, as I count it in your near classification, and 17 in your furthest?

A. That's right.

Q. You show the number, location of each of these stores, and then as you get into the columns to your  
1342 right, the first column is headed, "Total sales PW-PS". Does that mean total sales per week per store?

A. Yes, sir.

Q. And from what stores, taking, for example, the first store, 15, Aurora, did you derive the figure \$15,638.00?

A. From our company records.

Q. And the same is true as to each of the others?

A. Yes, sir.

Q. Other stores. Now, the next vertical column to the right on your exhibit is headed, "Annual Earnings", and you show on 15-Aurora a minus, or in parentheses, in accounting language, that indicates a minus \$4,107.00?

A. Yes, sir.

Q. From what source did you derive that?

A. Our company records.

Q. Your next vertical column headed, "Earnings as a percentage to total sales of the store," and as to 15-Aurora,



you show a minus .5 per cent. From what source did you derive that?

1343 A. From our company records.

Q. Now, you then have a blank column and you have two expense columns headed, "Annual expense charge for transportation" and another for "Advertising". From what source did you derive those figures?

A. Our company records.

1344 Q. Does the company, as a standard accounting practice, break down, as charges against each store, the amount of transportation expense in transporting merchandise to the store for sale?

A. They do.

Q. And as to advertising, do you maintain a similar accounting as to each store?

A. Yes, sir.

Q. And the figures reflected in those respective columns are the figures relied upon by the company in its usual course of business from the permanent records kept by the company indicating those expenses in the year 1961 to the stores, is that correct?

A. Yes.

Q. Now, just before the horizontal line B, you have two horizontal lines, one headed "Average per store per week," and the other "Average per store per year."

Do those two averages pertain to the figures immediately above them under the heading A, "Closest stores to Melrose"?

1345 A. Yes, those are totals of those groups. Totals and averages.

Q. Well, they are not totals, are they? They are—

A. They are totalled down and averaged, so they are the average of the above figures.

Q. They are the average of the above figures?

A. Yes.

Q. And they show that the total sales of the sixteen stores that were closest to the warehouse, the average sales were \$29,779 per week, is that correct?

A. Yes, that's correct.

Q. Now, did you follow a similar method of averaging with respect to the stores in Group B, those that were serviced from the warehouse?

A. Yes, I did.

Q. And those stores showed a slightly lower average sales volume than the stores in A, as I read that figure of \$28,463, am I correct?

A. Yes, sir.

Q. Again the average annual earnings per week of 1346 near-in stores in the year 1961 was \$961 a week, as compared with a loss of \$90 per week on the furthest-out stores, am I correct?

A. Yes, sir.

Q. And the earnings percentage was 3.2 per cent, if I read you correctly, of the near-in stores?

A. Yes, sir.

Q. Whereas the further-out stores lost 3/10 of a per cent?

A. That's right.

Q. Now, going to your annual expense charges, did you compute that the near-in stores had an average per week transportation expense of \$466 a week?

A. Yes, sir.

Q. Whereas the further-out stores had \$617 per week?

A. That's correct.

Q. And for advertising the average expense was \$125 per week for the near-in group, and it was \$255 per week for the further-out group?

A. That's correct.

1347 Q. Now, at the extreme foot of the sheet you have a caption or a heading, "Expense of Remaining Stores of Company Average per Year."

How did you compute those figures of \$14,390 and \$5,836?

A. By determining the total transportation expense and advertising expense of the company, I was able to derive company averages for each of these two figures, and then I went on to exclude these stores to take them out of the company.

Q. I see.

A. So they are company averages, excluding these thirty-three stores we are looking at.

Q. And that shows that both of these groups of stores ran above the company average in transportation and expense charges?

A. Considerably.

Q. Now, you have inserted, apparently in pencil, far-store expense over near-stores. That is simply a percentage compilation, is it not?

A. Comparing the further-out stores with the near-in stores showing a percentage difference.

1348 Q. As an accountant, what conclusion do you draw from this sheet as to the effect of distance to a store from your principal warehouse upon its profitability?

A. As we go further and further out from our primary supply, sources of supply and our headquarters, we find that, as seen by these two expenses, our stores become less and less profitable to the point where when they get far enough out, our stores can even operate at a loss.

We have drawn many perimeters around our city and have seen this relationship for other reasons, also.

Q. Do you have the Defendants' Exhibits 4, 5 and 6 there?

A. Yes, I do. I have all of them.

Q. In Exhibits prepared by Mr. Dunau, Defendants' Exhibits 4, 5, 6 and 7, and perhaps 46 and some others, stores were segregated and comparisons were drawn sim-

ply upon the basis of whether a store did or did not sell meat at night with respect to the entire chain.

1349 In your judgment as an accountant, what does Exhibit 21, Plaintiff's Exhibit 21 for identification, tend to show with respect to the validity of conclusions to be drawn from the Defendants' Exhibits to which I have referred?

1350 A. Referring to Exhibit 3 of Defendant, I believe an unfair inference could be drawn from that exhibit, leading one to believe that the selling meat at night could actually make stores less profitable, whereas in my opinion or judgment what could make a store unprofitable is being so far out from our lines of communication and our supply, as shown here where transportation in far out stores can be even double what it is in the close-in Chicago stores:

And for comparable newspaper advertising the expenses can be also over double what it can run for a Chicago store.

In my judgment I would say it would not surprise me if these far-out stores would be less profitable than the close-in Chicago stores and suburban stores, primarily because of the distance factor.

Mr. Christensen: I will offer Exhibit 21, in evidence, if it please your Honor, Plaintiff's Exhibit 21.

1351 Mr. Dunau: May I have the witness, your Honor.

The Court: Yes.

*Cross-Examination by Mr. Dunau.*

Q. Mr. Brodnicki, my copy is not very clear. Under, "Annual expense charged for advertising" in the last column, your average per store per week, what is that figure?

A. \$13,234.00.

Q. No, the figure above that?

A. \$255.00.

Q. \$255.00. And what was the one below that?

A. \$13,234.00.

Q. Then on the right margin opposite 103 per cent, what does that state?

A. Sorry, where?

Q. On the opposite right—

A. Oh, I was going to try to write in this footnote here, but there wasn't room and I merely wrote it in here.  
(Indicating.)

1352 Q. Oh, I see. You started to write?

A. "Far stores expense over near stores," and I erased it and put it over here.

Q. On the left side?

A. Yes, sir.

Q. Mr. Brodnicki, where is Melrose Park located?

A. About four miles west of the City, I believe.

Q. The City of Chicago?

A. Yes, sir.

Q. What is the distance of your nearest store from Melrose Park that you have on Plaintiff's Exhibit 21?

A. The nearest one to Melrose Park?

Q. Yes?

A. I don't have any mileage figures right now.

1353 Q. Do you know?

A. I would have to refer to some other calculations to show the mileage?

Q. Do you have them with you?

A. I don't believe so, but I could say this could be developed by looking at a map to develop the distance.

Q. The question was what is the distance?

Mr. Christensen: That has been asked. I object to it.

The Court: Overruled.

By Mr. Dunau:

Q. Is the answer, you don't know?

A. Developing this exhibit—

Q. Is the answer, you don't know?

A. That would be our Elgin stores, our Joliet stores.

Q. Mr. Brodnicki, do you know the distance from Melrose Park to the nearest store identified on Plaintiff's Exhibit 21?

A. Not without referring to a map.

Q. Do you know the distance from Melrose Park to 1354 the furthest store you have identified on Plaintiff's Exhibit 21?

A. About 78 miles, to Kenosha.

Q. 78 miles to Kenosha?

A. Yes.

Q. Is that the furthest store?

A. Yes, sir.

Q. Do you know the distances for the other stores from Melrose Park, that you have identified on Plaintiff's Exhibit 21?

A. I couldn't recall them exactly from my memory. I would know probably within five or six miles.

Q. You would come within five or six miles of the distance?

A. I would say I could.

Q. And that's about the closest you can come, five or six miles?

A. Without a map, yes, sir.

Q. How did you decide that a store was closest to Melrose and a store was furthest from Melrose?

A. We have figures we actually apply. Our transportation figures on a national basis, and from transportation records furnished to us by truck drivers who take these routes we have been able to measure this distance. That's where I made this.



Q. What store in Group A is furthest from Melrose?

1357 By the Witness:

A. I answered that already. Kenosha, sir.

By Mr. Dunau:

Q. In Group A?

A. Oh, in Group A I wouldn't know for sure. I believe it is either—I wouldn't know for sure.

Q. You don't know. Do you know what store in Group B is closest to Melrose?

A. I believe it is Gary stores.

Q. Do you know the distance between the closest store in Group A and the closest store in Group B to Melrose?

1358 A. I believe it is close.

Q. Do you know the distance?

A. No, sir.

Q. But you believe it is close?

A. Yes, sir.

Q. Do you know the distance from Melrose of the farthest store in the Chicago area which does not sell meat at night?

1359 A. The farthest store from—

By Mr. Dunau:

Q. Melrose.

A. No, sir.

Q. You do not?

1360 A. No, sir.

Q. Did you make any inquiry into it?

A. I don't believe so, sir.

Q. Did you make any inquiry into the distances from Melrose to any of the stores in the Chicago area?

A. I looked at the figures. I didn't do any great analysis with them.

Q. You made no analysis of the distance from Melrose of the stores within the Chicago area, is that what you are saying?

A. No, sir.

Q. That is what you are saying, is that correct?

A. Yes, sir.

Q. Mr. Brodnicki, by what method does the company determine how much to charge for transportation to each individual store?

A. It's a twofold method. First, let me say it attempts to determine—

Mr. Christensen: Mr. Brodnicki, please answer the question.

1361 By the Witness:

A. (Continuing.) By a mileage factor and a quantity factor, and the two factors interrelated to the best of your judgment; in other words, to determine the actual expense we have related what is moved; the volume moved and the distance, and have developed a relationship between the two.

By Mr. Dunau:

Q. Volume moved from what point?

A. There could be two points. One is in Chicago, but the—and primarily Melrose. In other words, the vast majority of our goods are grocery items, and there are some products from Chicago.

Q. What do you mean when you say "There are some products from Chicago?"

A. Our produce items.

Q. They are from sellers in the Chicago area?

A. Well, come from our Chicago warehouse.

Q. And do you have transportation costs which cover transportation of items which do not originate either at

your produce warehouse in Chicago or your warehouse 1362 house in Melrose?

A. Not as such. Those would be covered in the cost of the products, and they would not be isolated.

Q. So that you would have transportation expense reflected which is not listed under transportation charges on your exhibit, Plaintiff's Exhibit 21, is that correct?

A. Well, prior to bringing them into our warehouse somebody would have to pay the railroad fare to get them into that point.

Q. Do you have deliveries of meat to individual stores which never get into your warehouse?

A. Yes, sir.

Q. Do you know what percentage of those deliveries are in relationship to the whole of the delivery of meat to your stores?

A. I wouldn't know that figure.

Q. You would not know?

A. No, sir.

Q. Now, I am not sure I quite understood what method is used in determining transportation charge.

1363 You said you take the volume of goods shipped to a store from a warehouse, is that correct?

A. Based on their sales.

Q. So that the transportation charge would reflect the amount of sales made in that store?

A. Yes, sir.

Q. And the greater the volume of sales, the greater the transportation charge?

A. When tempered by distance, yes.

1364 By Mr. Dunau:

Q. In determining the transportation charge allocated to a store, is the volume of sales in that store an important factor?

Mr. Christensen: I will object to that as already answered.

The Court: He may answer.

By the Witness:

A. It is about half the pie.

By Mr. Dunau:

Q. About half the pie?

A. And distance is the other half.

Q. Now, would you tell me how the company ascertains the advertising charge allocated to each individual store?

A. This is in most cases very close to an actual figure. As an example, in Kenosha, this would be primarily the newspaper coverage in the Kenosha newspapers. And it would have to be divided up among those stores, so that in each case this is determining the advertising coverage in that community or communities, and dividing it 1365 into those stores we feel it benefits.

Q. So if you have a lower volume in a particular store, you might increase your advertising charge in order to increase the volume, is that it?

A. This is—this advertising is fairly consistent. It represents full-page ads primarily, and there is a fairly standard template which is used among the company, and our ads are fairly consistent through the chain.

In other words, we even supply the template or the plate from the Tribune and run the same one in the other newspapers so that this would be relatively standard.

Q. Mr. Brodnicki, opposite 499, Benton Harbor, you have an advertising charge listed of \$28,217.00. Is that an annual charge?

A. Yes, sir.

Q. Does that charge mean that the company is paying a newspaper in the area of Benton Harbor \$28,217.00 for advertising?

A. This can also be made up of—

Q. Answer the question. Is that what it means?

1366 Mr. Christensen: I object to interrupting him. He is endeavoring to tell him what it does mean. The witness should not be interrupted.

The Court: What is the answer?

The Witness: I couldn't answer yes or no. Could you repeat?

It does mean the—\$28,000.00 is primarily newspaper advertising, but there could be a share of radio and TV advertising there, also.

By Mr. Dunau:

Q. Well, then, it would be the cost to the company of advertising on TV, radio and newspapers, within the neighborhood of Benton Harbor, is that it?

A. Yes, sir.

1367 Q. Mr. Brodnicki, is the advertising charge for the stores within the Chicago area in which no fresh meat is sold lower than the advertising charge in other stores because there are more stores within which to divide the charge?

Mr. Christensen: Just a moment, please. May I hear that question?

(Question read.)

By the Witness:

A. In my judgment I would say, yes.

Mr. Dunau: No other questions.

Your Honor, we have no objection to the admission of this document. We think it proves nothing, but we have no objection to its coming into evidence.

The Court: It is admitted.

(Said document, so offered and received in evidence, was marked PLAINTIFF'S EXHIBIT 21.)

1368 Mr. Christensen: Thank you, Mr. Brodnicki.

(Witness excused.)

1369 Mr. Christensen: Mr. Mayer.

THOMAS F. MAYER, a witness called on behalf of the plaintiff, in rebuttal, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Mr. Mayer, will you please state your full name and address for the record?

A. Thomas F. Mayer; M-a-y-e-r, 8241 South McVicker, Oak Lawn.

Q. Illinois?

A. Illinois.

Q. How old a man are you, Mr. Mayer?

A. 31, sir.

Q. By whom are you employed?

A. Jewel Tea Company.

Q. In what capacity?

A. I am the delicatessen buyer and merchandiser.

1370 Q. How long have you worked for Jewel?

A. Fourteen years, sir.

Q. And what jobs have you held during that 14-year period?

A. I have been strictly a market man. I started out as an apprentice in '49. Went into the Service two years. Started in '51. Returned, became a market manager, market manager for four years, before I was promoted to the job of meat expediter in the Melrose Park office in 1961.

Q. Were you a member of the Amalgamated Meat Cutters Union?

A. I was.

Q. What local did you belong to?



A. 546.

Q. On November 5, 1962, did you make an inspection of certain stores, at the Jewel Food Stores located in the Hammond-Gary area to observe the condition of the meat counters in those stores?

A. I did.

Q. At whose request did you do that?

1371 A. Mr. Brewer.

Q. Did you make notes at the time?

A. I did, sir.

Q. From your notes—without your notes can you recall the precise time of your arrival at each of the stores in that—

A. Fairly well, sir.

Q. Will you tell the Court what stores you visited that evening and approximately the time at which you visited each store, and what you observed as to the condition of the meat counters with respect to quantity of goods displayed and condition of the packaging thereon?

Mr. Dunau: Is this on November 5th, Mr. Christensen?

Mr. Christensen: Yes, sir, 1962.

By the Witness:

A. The first store was 1755 Indianapolis Boulevard in Whiting. I arrived at approximately 6:30, visited the meat counter.

There were six customers in the store. One was 1372 at the meat counter.

I approached this woman and asked her if—

Q. Well, you will not be permitted to tell about your conversation with a customer.

A. I found a very, very good display of meat. The counter was orderly and there was an exceptionally good variety of meat in the counter.

I stayed in the store approximately seven minutes, at

which time I proceeded to 6933 Indianapolis Boulevard in Hammond.

I arrived there approximately 7:05. There were eight customers in this store, if I remember correctly. The counter was also in very good condition. Packages were very orderly and had very, very good variety.

I stayed approximately the same amount of time in that store, at which time I proceeded to 4569 Broadway, in Gary, and went to the meat counter.

1373 There were three customers in the store, this particular store. The counter likewise was very orderly and a full display of meat.

I then proceeded to 661 Main Street in Hobart, and observed the same condition in that store.

1374 By Mr. Christensen:

Q. Now, these times are evening times, are they not?

A. That is correct, sir.

Q. Was there a butcher on duty in any one of those four stores?

A. No, sir, there was not.

Q. Did you observe any torn packages in any of those meat counters that evening?

A. None, sir.

Q. Did you observe any discolored or spoiled meat in any of those counters?

A. No, sir.

Q. Mr. Mayer, does Jewel have a system known as coding of meats?

A. Yes, they do, sir.

Q. Now, in your parlance, what does that term "coding" mean as you use it?

A. A code is an expiration code that is put on every package of fresh meat that goes into our counters after processing, after wrapping.

Q. And of poultry, also?

A. Of poultry, also, sir.

1375 Q. And what does the code signify or mean?

A. The code signifies that on the expiration date this product must be removed from the counter, examined, and if, at the market manager's discretion or some other responsible party, it is still salable in its exact form or in a reprocessed form, this is exactly done to the meat. It is repackaged, repriced, and put out for sale.

Q. Now, apart from any problems of spoilage in the pre-packaged sale of meat, there are reasons for repackaging meat after it has been in one of these pasteboard containers for a day or two?

A. Yes, sir.

Q. What are those reasons?

A. Excessive leaking, or as we call it, bleeding of a particular product.

Q. Well, the paper tends to absorb either blood or moisture from the meat?

A. That is correct.

Q. That is, the paper of the container?

A. Correct.

Q. And if it is one or two or three ounces—

1376 A. That is correct.

Q. (Continuing.) —the customer would get, to that degree, shorted on weight?

A. Right.

Q. And these are permissible limits that are set up, so that, although the meat is perfectly salable and edible, there may have been some shrinkage in the meat, itself, is that correct?

A. That's right.

Q. Now, with respect to the pre-packaged system of selling, is poultry by and large—is there any difference in the problems of wrapping poultry from the problems of wrapping meat?

A. Yes, sir.

With respect to this heavy bleeding, as I have stated previously, poultry can lose a lot of its moisture in a very short period of time. At the end of every day our poultry at Jewel has to be taken out of the counter, re-wrapped and reweighed.

Q. These nights you saw no torn packages in any of these meat counters?

A. That is correct.

1377 Q. In general, is the tearing of the cellophane, or whatever this material is around the packages, a problem of any substance in the pre-package system of sale of meats within your coding system?

A. No, sir.

1378 Q. During the time you have been permitted to sell fresh poultry at night, have you encountered any merchandising problems with it that are not common in the daytime?

A. None, sir.

Q. In your judgment if it has proved feasible and successful to sell prepackaged poultry at night, is there any faint reason why the same couldn't be done with red meat?

A. No, sir.

1379 EDWARD D. HANKS, having been first duly sworn, deposeth and saith as follows:

*Direct Examination by Mr. Christensen.*

Q. Mr. Hanks, will you state your full name and address for the record?

A. Edward D. Hanks, 3312 North Drive, Highland, Indiana.

Q. By whom are you employed?

A. Jewel Tea Company.

Q. How long have you been employed by Jewel?

A. Nine years.

Q. In what capacity?

A. I'm a meat market manager at the moment.

Q. And in November, 1962, this month; what market were you employed at?

A. 1755 Indianapolis Boulevard, Whiting.

Q. Now on Tuesday, November 6, did you work at that store?

A. No, sir.

1380 Q. That was my day off.

Q. Were you requested on the 8th or 9th or thereabouts some time, to furnish us with information as to when meat in the meat counter at that store had been coded, put in the counters and taken out?

A. Yes, sir.

Q. What is the fact with respect to the chop suey meat that was in that store on Tuesday, the 6th, with respect to its coding?

A. Well, the chop suey meat in question was processed on the previous Saturday.

Q. Saturday, November 3rd?

A. Yes, and it was taken out of the counter Saturday night at the close of business. We were closed Sunday. Monday morning it was unwrapped and checked for freshness and re-wrapped, priced, and put back on sale Monday morning.

The expiration code was Wednesday of that week.

Q. Were you there on Wednesday, November 7th?

A. In the afternoon I was there, yes, sir.

Q. And was all the meat taken out within its  
1381 coding dates, so far as you know?

A. Yes, sir.

Q. In the entire period between Saturday the 3rd, and Wednesday the 7th?

A. Yes, sir.

Mr. Christensen: You may cross-examine.

Mr. Dunau: No questions.

(Witness excused.)

1382 GEORGE D. KOLIAS, a witness called on behalf of the plaintiff, in rebuttal, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you please state your full name and address?

A. George D. Kolas, 115 East 118th Place, Chicago, Illinois.

Q. How old a man are you?

A. Forty-two.

Q. By whom are you employed?

A. Jewel Tea Company.

Q. How long have you worked for Jewel?

A. Eight years.

Q. In what capacity?

A. As a meat cutter and as assistant market manager, as of now.

Q. Are you a member of the Amalgamated Meat Cutters?

A. Yes, I am.

Q. What local?

A. 350.

Q. And that has jurisdiction out in—

1383 A. Indiana.

Q. Out in the Northern Indiana area, does it not?

A. Yes, sir.

Q. What store were you working in this month of November, 1962?



A. 1755 Indianapolis Boulevard.

Q. Were you on duty on Tuesday, November 6th?

A. Yes, sir.

Q. Did you inspect the meat counter before you quit work at 6:00 o'clock that night?

A. Yes, sir.

Q. Was there any spoiled meat in that meat counter, chop suey meat, or otherwise?

A. No, sir.

Q. Did you work on Wednesday morning, the 7th of November?

A. Yes, sir.

Q. At that time was the chop suey meat re-wrapped?

A. Yes, sir. It was taken out of the counter and re-processed.

Q. Was it spoiled?

1384 A. No, sir.

Mr. Christensen: You may cross-examine.

*Cross-Examination by Mr. Dunau.*

Q. Mr. Koliass, do you know whether any of the chop suey meat in the counter at 6:00 P.M. on Tuesday night when you left was sold between 6:00 P.M. and 9:00 P.M. that night?

A. I couldn't say.

Mr. Dunau: No other questions.

Mr. Christensen: That's all. Thank you.

(Witness excused.)

Mr. Christensen: Mr. Cantrell, will you take the stand, please?

1385 CHARLES A. CANTRELL, a witness called on behalf of the plaintiff, in rebuttal, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Christensen.*

Q. Will you please state your full name and address for the record?

A. Charles A. Cantrell.

Q. Where do you live, sir?

A. 3947 Grove Avenue in Western Springs, Illinois.

Q. By whom are you employed?

A. Jewel Tea Company.

Q. In what capacity?

A. Division Manager. Market Division Manager.

Q. We laymen would say meat market department?

A. Well, yes. In the market operation.

Q. Yes. How long have you been employed by Jewel?

A. Five years.

Q. Before that, by whom were you employed?

A. I was with the Eisner Grocery Company for five years in Champaign, Illinois.

1386 Q. All right.

Now, after Jewel acquired Eisner you ultimately came up here to Chicago, is that correct?

A. That is right.

Q. When did you come to Chicago?

A. In August of 1958.

Q. In what capacity?

A. As an operating manager, division operating manager.

Q. In due course of time, did you become acquainted with a market manager by the name of Walter Santeler?

A. I did.

Q. Who was working in markets in the Rockford area?

A. That is right.

Q. Did you find occasion to talk with Santeler about the adequacy of his performance as a market manager?

A. I did.

Mr. Christensen: Mark this Plaintiff's Exhibit 22 for identification.

(Said document was marked Plaintiff's Exhibit 22, for identification.)

1387 By Mr. Christensen:

Q. I show you a document marked Plaintiff's Exhibit 22 for identification, and ask you if that bears your signature and Mr. Santeler's signature?

A. It does.

Q. Please state the circumstances surrounding the preparation and signature of that document?

A. Before this document was written I had occasion to believe that Mr. Santeler was not living up to Jewel Tea policies in the grinding of meat.

There had been a rumor that he was using beef hearts and beef tongues in ground hamburger, which is strictly against Jewel policy.

In checking his orders, I found that his orders did not compare with another market similar to his for the amount of beef hearts and beef tongues, so I became suspicious that this rumor was correct and I went out to talk to Mr. Santeler.

He agreed that he had been doing this. He admitted it.

I asked him at the time if he had not signed our ham-  
1388 burger memorandum that the company gets out for all managers that hamburger will not be adulterated in any manner or form, that it is to be strictly beef and it is supposed to be fresh ground meat, ground trimmings.

He said that he had. He had no excuse for this, so a day or two later, after talking to him, I dictated this letter and

took it out and had him sign it and put it in his personnel file.

Q. Did he sign that in your presence?

A. He signed it in my presence.

Q. And did you discuss with him that he was not performing properly, both with respect to leaving out of coded products in his case and this adulteration of product?

A. I did.

Q. Was Mr. Santeler in debt to the Jewel Tea Company in 1959 and 1960?

A. I wouldn't say he was in debt. He borrowed money on his Jewel Retirement Plan.

Q. He signed a note for that, didn't he?

A. He signed a note for it.

1389 Q. Had he also purchased a home?

A. Yes, he had.

Q. To your knowledge?

A. Yes.

Q. On which he had outstanding a large mortgage?

A. Yes.

Q. There is a system on which the Jewel retirement operates.

Can an employee get his or her vested interest out of the plan, save by retiring or quitting?

A. Yes.

Q. They can get it out—

A. They can get it out by retiring or quitting.

Q. Yes, that's the only way you can get it?

A. That is right.

1390 By Mr. Christensen:

Q. I show you a document marked Plaintiff's Exhibit 23 for identification, and ask you if that is a copy of a record from the permanent personnel file showing Mr.

Santeler's status in the Jewel estate's retirement program as of May 23, 1961?

A. That is right.

Q. And when he, Mr. Santeler, quit, he got \$9,035.06, which he was at liberty to apply against his mortgage or against any purpose that he wished to, was he not?

A. This was his money.

Mr. Christensen: I will offer the two documents in evidence, if it please the Court.

Mr. Dunau: No objection.

The Court: They may be admitted.

(Said documents, so offered and received in evidence, were marked PLAINTIFF'S EXHIBITS 22 and 23.)

1391 Mr. Christensen: You may cross examine.

Mr. Dunau: No questions.

Mr. Christensen: Thank you.

(Witness excused.)

1392 EDWARD T. VORBECK, having been previously duly sworn, deposeth and saith further as follows:

*Direct Examination by Mr. Christensen (Continued).*

Q. You are the same Edward T. Vorbeck previously sworn here and who testified, are you not?

A. I am.

Q. During the 1957 negotiations, did there come a time in which there was a discussion or a conversation in which you participated or heard in which Mr. Kelly made a statement as to the desirability or non-desirability of time and a half after forty hours for butchers?

A. Yes, sir.

Q. Will you please state what that discussion was and the circumstances under which it took place?

Mr. Dunau: Would you identify when, please?

By Mr. Christensen :

Q. Yes, when?

A. The discussion occurred on the afternoon of 1393 November 1, 1957. It followed the presentation of a fifteen point proposal by the union in which it was introduced by stating that they would submit the Jewel proposal without recommendation.

Then, at the conclusion of the fifteen point proposal, which was submitted basically for the consideration of the industry, there was an indication that the union considered the Jewel proposal non-livable.

As the result of this comment, Mr. Morris and I asked for a conference with the sub-committee of the union. The sub-committee was Mr. Kelly, and Mr. Neilubowski. We then asked them what conditions were non-livable in the Jewel proposal, wasn't our wage proposal a satisfactory one.

Mr. Kelly indicated it was a substantial wage proposal, but that in his opinion two proposals in that were not livable. The two conditions were the requirement for the proposal at a classification for female wrappers was ordered to the wage or labor classifications in the contract, and secondly, that it provided for no time and a half after 6:00 o'clock.

1394 At this point Mr. Neilubowski interjected that it also did not provide for time and a half after forty. Mr. Kelly corrected him and said, "I don't believe that its—we are interested in time and a half after forty."

The fact is that the proposal of the entire industry did not ask for time and a half after forty, it asked for time and one-fourth.

He stated the example of the construction industry in which he had observed people—where the time and a half after forty is in existence—where he had observed or knew the practice to be that men would come back and work for



their own employer at straight time when they wouldn't have been employed at time and a half.

I don't know that he used the word "scabbing" but that was the effect of it.

Mr. Christensen: You may cross examine.

Mr. Dunau: No questions.

Mr. Christensen: That's all, thank you.

(Witness excused.)

1396 Mr. Christensen: Plaintiff rests, your Honor.  
Whereupon the plaintiff rested its case in rebuttal.

1398 (Which were all of the proceedings had and evidence offered and received on the trial of the above-entitled cause.)

1399 IN THE UNITED STATES DISTRICT COURT.  
• • (Caption—58-C-1415) • •

### CERTIFICATE.

I hereby certify that the above and foregoing transcript, Pages Nos. 1 to 1398, inclusive, is a true and accurate transcript of the original shorthand notes taken upon the trial in the above-entitled cause, on October 24, 25, 26, 30, 1962, and November 2, 5, 7, 8, 28 and 29, 1962.

Paul A. Ruhl,  
*Official Court Reporter,  
United States District Court.*

Dated: October 29, 1962.

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IN THE UNITED STATES DISTRICT COURT.

• • (Caption—58-C-1415) • •

**JUDGMENT.**

The above entitled action having been tried by the Court without a jury, and the Court, having heard all of Plaintiff's evidence, now makes the following findings of fact:

**Findings of Fact.**

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1. Plaintiff grounds its action on 15 U. S. C., Sec. 15, which provides: "Any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold damages by him sustained, and the cost of suit, including a reasonable attorney's fee."
2. Plaintiff has clearly established existence of Union Contracts under which Plaintiff is prevented from selling meat and meat products before 9:00 A. M. or after 6:00 P. M., Mondays through Saturdays, in its Chicago area stores. Moreover, such meats, if Plaintiff were permitted so to do, would be sold pre-packaged via a self-service system.
3. The Defendant Associated Food Retailers of Greater Chicago, Inc. is a trade association consisting of various individual or independent food stores engaged in the retail sale of meats for human consumption in the Greater Chicago area.
4. The Defendant, Charles H. Bromann is the Secretary and Treasurer of the aforesaid trade association. Said Defendant Charles H. Bromann con-

- 119 ducts collective bargaining for and on behalf of the aforesaid trade association, which association enjoys the industry-wide contract. ③
5. From 1957 Plaintiff sought exclusion of the restriction on night sales from the industry-wide contract, and the Defendant Local Unions resisted such exclusion. The rest of the Industry agreed with the Defendant Local Unions to continue the ban on night operations.
6. The testimony of R. Emmett Kelly, assistant business representative for Defendant Local Union 546, indicates Union activity and is devoid of any significant mention of Defendants Charles H. Bromann or Associated Food Retailers of Greater Chicago, Inc.
7. There is no evidence in the record showing that there is or was any conspiracy among and between Defendants Charles H. Bromann, Associated Food Retailers of Greater Chicago, Inc. and the Defendant Local Unions.
- 120 8. There is no evidence in the record tying in Charles H. Bromann or Associated Food Retailers of Greater Chicago, Inc. as conspirators in any manner whatsoever.
9. After Plaintiff completed the presentation of its evidence, the Defendants, Charles H. Bromann and Associated Food Retailers of Greater Chicago, Inc., moved to dismiss this action pursuant to Rule 41 (b) of the Federal Rules of Civil Procedure.
10. The Court has expressly determined, in accordance with Rule 54 of the Federal Rules of Civil Procedure that there is no just reason to delay the direction of the entry of a final Judgment as to one or more, but fewer than all, of the parties involved in this action.

From the foregoing facts shown by the pleadings, or embraced within stipulations or agreements of the respective parties to this action, and upon the evidence adduced before the Court herein, the Court concludes as a matter of law:

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*Conclusions of Law.*

1. Since the gist of the Complaint against Defendants Charles H. Bromann and Associated Food Retailers of Greater Chicago, Inc. is conspiracy, Plaintiff has failed to prove any cause of action whatsoever against said Defendants Charles H. Bromann and/or Associated Food Retailers of Greater Chicago, Inc.
2. Plaintiff has shown no right to any relief whatsoever against Defendants Charles H. Bromann and/or Associated Food Retailers of Greater Chicago, Inc.

*Direction for Entry of Judgment.*

It is, therefore, ordered and adjudged that the motion of Defendants Charles H. Bromann and Associated Food Retailers of Greater Chicago, Inc. to dismiss this action be, and it is hereby allowed, and the Court having found no just reason to delay the direction of the entry of a final Judgment as to one or more, but fewer than all, of the parties involved in this action, therefore said Defendants Charles

H. Bromann and Associated Food Retailers of Greater  
122 Chicago, Inc. are hereby forthwith dismissed from this  
action. Costs shall be allowed to said Defendants.

Entry of final Judgment in accordance with the foregoing is hereby directed.

/s/ WALTER J. LA BUY,

*U. S. District Judge.*

Dated: November 28, 1962.

IN THE UNITED STATES DISTRICT COURT  
For the Northern District of Illinois,  
Eastern Division.

Jewel Tea Co., Inc.,

v.

Local Unions Nos. 189, 262, 320,  
546, 547, 571 and 638 Amalga-  
mated Meat Cutters and Butch-  
er Workmen of North America,  
AFL-CIO, Charles H. Bromann,  
Associated Food Retailers of  
Greater Chicago, Inc., et al.

No. 58 C 1415

NOTICE OF APPEAL TO THE COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT.

Clerk, United States District Court  
United States Court House  
Chicago, Illinois

Notice is given that plaintiff, Jewel Tea Co., Inc., hereby  
appeals to the United States Court of Appeals for the  
Seventh Circuit from the Judgment entered in this action  
on November 28, 1962, wherein the cause was dismissed  
as to defendants Charles H. Bromann and Associated Food  
Retailers of Greater Chicago, Inc.

/s/ George B. Christensen,

/s/ Fred H. Daugherty,

*Attorneys for Jewel Tea Co., Inc.*

Winston, Strawn, Smith & Patterson,  
38 South Dearborn Street,  
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IN THE UNITED STATES DISTRICT COURT.

\* \* (Caption—58-C-1415) \* \*

## MEMORANDUM.

Plaintiff Jewel Tea Company seeks a declaratory judgment, injunctive relief and treble damages under the anti-trust laws, charging that the defendant unions and the Associated Food Retailers of Greater Chicago, Inc., an association of independent retail stores, conspired to suppress competition among retail meat markets in the Chicago area by limiting the marketing hours for the sale of fresh meat. The sufficiency of the complaint was sustained by this court and affirmed by the Court of Appeals on an interlocutory appeal. (*Jewel Tea Co. v. Local Unions, et al.*, 274 F. 2d 271 (7th Cir. 1960).) The cause was remanded and tried by this court without a jury.

At the close of plaintiff's case this court allowed the mo-



tion to dismiss of defendants Bromann and Associated on the ground that there was no evidence showing that either or both of these defendants conspired with the defendant union in forcing the restrictive provision upon plaintiff.

Since plaintiff sought relief from the defendant unions 187 apart from the theory of conspiracy, the unions' motion to dismiss was denied. The court must now determine, on the basis of the entire record, whether the provision limiting marketing hours for the sale of fresh meat in the collective bargaining agreement between the defendant unions, plaintiff and other employers violated the anti-trust laws, and entitled plaintiff to the relief demanded.

This issue was not and could not have been previously determined by this court or by the Court of Appeals in the proceedings evaluating the pleadings. It was not possible at the pleading stage to determine whether the challenged provision was the means of effectuating a conspiracy, or was a part of the conditions of employment. In affirming the sufficiency of the complaint, the Court of Appeals predicated its decision in part on the proper assumption of the existence of the alleged conspiracy between the unions and non-labor groups, and in part on the necessity of a trial to ascertain whether the restraint was unreasonable. (274 F. 2d 221, 222, 223.)

The adjudication of the issue now before the court necessitates a review of the purport, history and effect of the marketing hour restriction in the collective bargaining agreement. The uncontroverted evidence shows that the limitation upon market operating hours originated after the butchers strike of 1919 in opposition to the prevailing 81 hour, 7 day work week. The ensuing 1920 collective bargaining agreement governing Meat Cutters imposed limitations on hours of labor and upon marketing hours. It provided:

"Article 1—Nine hours shall constitute the basic working day, hours shall be 8 A. M. to 6 P. M., excepting Saturdays and days preceding holidays beginning at 8 A. M. and quitting at 9 p.m., allowing 1 hour for dinner and one-half hour for supper. Employees must be dressed and ready for work at 8 A. M.

188 "Article 2—It is expressly understood *that no customers will be served who come into the market after 6 P. M. and 9 P. M. on Saturdays and on days preceding holidays*, that all customers in the shop at the closing hour be served, that all meats be properly taken care of and markets placed in a sanitary condition, such work not to be construed as overtime. Overtime to be limited to 1 hour every day and *shall be performed behind locked doors*.

"Article 3—There shall be no work on Sundays, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day or New Year's Day." (Emphasis added.)

The hours established by the 1919 strike continued until 1937, when the Saturday work hours and marketing hours were reduced and set at 8:30 A. M. to 7 P. M. Further modifications of working hours and correlative marketing hours were made in 1941, 1945, 1946 and in 1947, when they were set at 9 A. M. to 6 P. M. Monday through Saturday, with marketing hours no later than 6 P. M. The hours thus established have continued to the present. These changes, taken from agreements of Local 546, were followed in the agreements of all the defendant unions, except Local 189, which executes a separate agreement to meet conditions peculiar to it.

From the inception of plaintiff's operation of meat markets in the Chicago area in 1933, it entered agreements with the defendant unions containing these marketing hour restrictions, which were identical to agreements made with other meat market employers in the Chicago area.

The current collective bargaining agreement includes a

"Service Contract" applicable to service meat markets, and a "Self-Service Contract" applicable to self-service meat markets. This differentiation began in December 1952, on the advent of the self-service mode of vending meat in this area. These contracts recognize the union as the exclusive bargaining representative of all employees in the meat department who process, wrap, handle and sell frozen and fresh meats on the employer's premises.

189 With minor exceptions, the contracts require that the work entailed in the preparation and sale of meat, including the replenishment of stock and cleaning of counters shall be performed exclusively by the meat department employees represented by defendant unions. Both contracts provide that 8 hours shall constitute the basic work day, which shall begin no earlier than 8 A.M. and end no later than 6 P.M. They provide also that "at the employer's discretion overtime at overtime rates may be worked after 8 hours in any one day and behind locked doors after 6 P.M." They further specify that "market operating hours shall be 9 A.M. to 6 P.M. Monday through Saturday," and that no customer shall be served who comes into the market before or after these hours. The contracts do authorize the sale after 6 P.M. of certain products other than fresh meat.

The collective bargaining agreement also provides that the unions agree not to enter into a contract with any other employer designating lower wages, or longer hours, or any more favorable conditions of employment.

Similar contract provisions, or with variants for a single night operation, are in operation in other metropolitan areas.

The record sets forth in detail the method of bargaining between the employer group and the union group, followed since 1941, and the negotiations relative to the 1957, 1959 and 1961 contracts. Each group formulates its position

independently. The union's demands are based on a preliminary survey of members, who are consulted in the course of negotiation and must ratify any agreement; and the employers meet in advance of negotiations to explore their objectives, and caucus periodically to determine their bargaining position.

190. On July 25, 1957, the defendant unions gave notice of their desire to negotiate the new contract. They presented their demands to the employer group on August 20. On August 9 plaintiff's principal negotiator, E. T. Vorbeck, and representatives of various chain stores formulated 6 employer demands for negotiation: night openings, female wrappers, automatic wrapping machines, flexible work day, right to pre-price off premises, and the right to sell fresh frozen meats. On August 30, Vorbeck apprised Carl H. Bromann, Secretary of Associated, who had acted as chairman for the entire employer group in 1950, of the demands of the chain stores and of the scheduled meeting with the unions on September 5. On that date the union representatives met and exchanged demands with the representatives of the employer group, including plaintiff, National Tea, Associated, Hillmans, High-Low, Krogers, A&P, Piggly Wiggly, Goldblatts, Wieboldts, Save-Way, Del Farm, Sure-Save and I.G.A. Substantially the same group of employers continued to meet with the unions through the 1957 negotiations.

It would serve no useful purpose and would unduly prolong this opinion to detail the proposals and counter-proposals made at the numerous meetings that followed. Suffice to note they indicated that the unions from the outset did not want night work; and that the employers' demand for night operating hours were intertwined with the extension of working hours and the "flexible day," which meant starting later and working nights, as well as with various wage premiums "to sell" night work.

Typical of the negotiations is the all-employer proposal of November 15, 1957, which stipulated for Friday night operations, with a male employee on duty during marketing hours and extended the work day on Friday between 191 8 A. M. and 9 P. M. Not only did Associated join in this proposal, but at a subcommittee meeting prior to its introduction Bromann personally requested R. Emmett Kelly, the union representative, to agree to night marketing operations.

The record also shows that plaintiff, who threatened to sue as a co-conspirator any employer who opposed night marketing operations, offered at the close of the 1957 negotiations to give up that demand if the unions would agree to female wrappers. No such alternative concession was made by National Tea Co. The union, however, refused to accept either night operations or female wrappers, and ratified a contract without those provisions, notwithstanding plaintiff's threatened litigation. Moreover, Local 546, by secret ballot, authorized a strike if necessary to avoid night operations, by a vote of 2,253 in favor to 98 against. The employers signed the collective bargaining agreement with the restriction, and plaintiff alone immediately instituted these proceedings.

During the 1959 negotiations the union group was willing to bargain on night marketing hours. However, in the absence of agreement on a sufficient wage incentive, the final contract retained the restriction, but eliminated payment of time-and-a-half for work between 8 A. M. and 9 A. M., and granted the employer group a limited flexible day.

In the 1961 negotiations the employer demands for night marketing operations were again intertwined with night working hours and wage incentives for night work. The all-employer proposal of September 12, drafted by plaintiff, committed market operating hours to the unlimited dis-



cretion of the employer, and provided for employees to be "scheduled" to work after 6 P. M. It also established a "supper period" to end no later than 8 P. M., and stipulated that "hours and days to be worked by each employee shall be determined by the employer," and that all employees may be required to work overtime.

Similarly, plaintiff's proposal number 2 of November 13 also contemplated night operations and stipulated that a journeyman be on duty during all hours that fresh meat is offered for sale between 9 A. M. and 9 P. M. Monday, Thursday and Friday, and as needed after 6 P. M. on Tuesday, Wednesday, Saturday and Sunday. Only one proposal was ever made by plaintiff in the course of the prolonged negotiations on all three contracts, which suggested night operations without butchers on duty, and that was submitted to the unions at the end of the day as negotiations were "breaking up" on November 16, 1961.

Defendant unions questioned the seriousness of that proposal under the circumstances. They also presented evidence that a self-service meat market cannot operate at night without employees on duty to rearrange and replenish stock in the counters, and give customers necessary personal attention. They showed that in most of plaintiff's stores outside Chicago, where night operations exist, meat cutters are on duty whenever a meat department is open after 6 P. M., and that plaintiff has extended market operations in a substantial number of stores to 11 P. M. for 6 nights a week and on Sundays. Even in self-service departments, ostensibly operated without employees on duty after 6 P. M., there was evidence that requisite customer services in connection with meat sales were performed by grocery clerks. In the same vein, defendants adduced evidence that in the sale of delicatessen items, which could be made after 6 P. M. from self-service cases under the contract, "practically" always during the time the market



was open the manager, or other employees, would be rearranging and restocking the cases. There was also evidence that even if it were practical to operate a self-service meat market after 6 P. M. without employees, the night operations would add to the workload in getting the meats prepared for night sales and in putting the counters in order the next day.

The record also showed that plaintiff differed with all the other employers by insisting that the health and welfare plan should not be cost free to the employees, and would not assent to the industry settlement until January 2, 1962.

Plaintiff adduced testimony of numerous witnesses that they were inconvenienced by the restriction on night sales of fresh meat, and would buy more meat if night hours were available. Some 11 butchers testified that they would be willing to work at night. There is also evidence that plaintiff's meat cutters voted 759 to 28 against night work in a mail ballot.

Defendants submitted a Department of Agriculture survey of food consumption showing that the amount of meat purchased is dictated by income. They also presented a study compiled by the Bureau of Labor Statistics respecting average consumer expenditure for meat, which indicated that Chicago, where night sales of meat were restricted, ranked 4th of 49 large cities in total meat expenditures; and of 11 cities with a population of over one million, Chicago ranked 3rd for all meat sales, and highest for pork sales. Of the 11 cities, Cleveland, where night sales were also restricted, stood 2nd highest in expenditures for all meat, and 2nd highest for beef sales. Defendant submitted these statistics to show that night marketing 194 hours have no effect on the amount of meat purchased.

To establish damages resulting from the limitation on marketing hours, plaintiff introduced a study made by one of its employee accountants of differences in 9 store

earnings the year before and the year after night meat operations were authorized. The study purported to show that the increase in earnings was due to the evening marketing hours for meat. Defendants attacked the validity of the study on numerous grounds. The study, made by an employee who had only a single half-semester course in statistics, failed to take account of certain economic variables affecting sales and profits; the study erroneously included one store in which no change in hours occurred; a decrease in sales and earnings occurred in two stores; and the increase in earnings in another store was identical with the average increase in earnings for the same period in stores in which there were no night operations.

It is within this factual framework that the restriction in the collective bargaining agreement must be viewed in determining whether it violates the anti-trust laws.

Section 1 of the Sherman Act makes illegal any contract, combination or conspiracy in restraint of trade among the several states. (15 U.S.C.A. 1.) Where labor union activities are involved, this section must be considered jointly with section 20 of the Clayton Act and the Norris-La-Guardia Acts. (15 U.S.C.A., § 12-17; 29 U.S.C.A. 101-115; *U. S. v. Hutcheson*, 312 U. S. 219, 231.) These "interlacing statutes" declare two congressional policies: "to preserve a competitive economy," and "to preserve the rights of labor to better its conditions through collective bargaining." (*Allen-Bradley Co. v. Union*, 325 U. S. 797, 807.) In reconciling these policies the Supreme Court has held that

195 there was no congressional intent to bestow a blanket of immunity upon labor unions if they combined with non-labor groups to create business monopolies and fix prices. (*Allen-Bradley Co. v. Union*, *supra*, at p. 807; *United Brotherhood of Carpenters v. U. S.*, 330 U. S. 395, 398; *U. S. v. Women's Sportswear Assoc.*, 336 U. S. 460, 463.) As the U. S. Supreme Court adroitly stated in the

Women's Sportswear case, "benefits to organized labor cannot be utilized as a 'cat's paw' to pull employer's chestnuts out of the anti-trust fires."

Although plaintiff initially contended, and still asserts that the defendants conspired with Associated, a non-labor group, to suppress competition by the market operating restriction on the sale of fresh meat before 9 A.M. or after 6 P.M. Monday through Saturday, and that the unions acted as the enforcing agents of the conspiracy, this theory failed to withstand the "crucible of trial." As previously noted, at the close of plaintiff's case, this court allowed a motion to dismiss Associated and Bromann from the cause since the record was devoid of any evidence to support a finding of conspiracy.

The record showed only that Bromann, on behalf of Associated, which represented some 1000 individual and independent food stores, dealt with the unions at arm's length. At no time did he receive a direction to demand a 6 P.M. closing; nor did he make any such demand. On the contrary, Associated, through Bromann, joined in the all-employer offer of November 15, 1957, demanding the elimination of the restriction on night marketing, and specifically requested that change from the union representative at a sub-committee meeting. Even Vorbeck's letter of October 1, 1961; to his company, stated that Associated did not oppose night work, but that some opposition came from other chains. This fluctuating opposition by some 196 employers to night operations because of their high cost is hardly tantamount to a conspiracy with the unions. Hence, any attempt to reassert that theory must fail.

In determining whether the contract itself, apart from any theory of conspiracy, violated the Sherman Act, there is some merit to defendants' procedural objection that the case, after the dismissal of Bromann and Associated,

should not have proceeded forward on a different basis from that alleged in the complaint, as sustained by the Court of Appeals. However, it is preferable to dispose of the case on the merits, rather than on technical or procedural grounds. (*Adams Dairy Co. v. St. Louis Dairy Co.*, 260 F. 2d 46, 52 (1958).)

The mere fact that a collective bargaining agreement is entered between the employers of an industry and the union does not automatically offend the Sherman Act. (*Allen-Bradley Co. v. Union*, *supra*, at p. 809.) There is no "litmus paper" test to determine whether a particular bargaining provision is within the labor exemption, or is in derogation of the anti-trust laws. Courts have emphasized such factors as whether the provision originated with labor or with the non-labor group (*U. S. v. Women's Sportswear Assoc.*, 336 U. S. 460); whether its purport was essentially to benefit the union in its legitimate objectives (*Phil. Rec. Co. v. Mfg. Eng'r Assoc.*, 155 F. 2d 799; *Schatte v. Int. Alliance*, 182 F. 2d 158); whether it was imposed by the union after arm's length negotiation (*U. S. v. Milk Driver's Union*, 153 F. Supp. 803, 806; *Adams Dairy Co. v. St. Louis Dairy Co.*, *supra*, at p. 54); and whether it effectuated results prohibited by the Sherman Act, such as price fixing or the elimination of competition (*U. S. v. Plasterer's Assoc.*, 347 U. S. 186; *U. S. v. Gasoline Retailer's Assoc.*, 285 F. 2d 688; *United 197 Brotherhood of Carpenters v. U. S.*, 330 U. S. 395).

The record before this court shows that the marketing hour restriction originated as a result of the union's strike against the 81 hour, 7 day work week in 1919, long before plaintiff sold meat or Associated was organized. It was inserted in the collective bargaining agreement in juxtaposition to, and as an implementation of, the Article specifying hours of work for butchers. In fact, through the years each change in hours of labor brought a corre-

sponding change in market operating hours, until night work was finally eliminated in the Chicago area in 1947. Lifting the restriction on marketing hours would mean a return to longer hours and night work. This is evident from the face of the employer proposals, which included the "flexible day," night hours, and wage premiums "to sell" night work, and from the practices of the trade, particularly in plaintiff's stores where night sales of fresh meat were authorized.

Moreover, even the single offer made by plaintiff at the close of negotiations in 1961 for night operating hours without night work for butchers in the self-service markets was contrary to the union's self interest. It meant that their work would be done by others unskilled in the trade, since the evidence showed that in stores where meat is sold at night it is impractical to operate without either butchers or other employees. Someone must arrange, replenish and clean the counters and supply customer services. In addition, that proposal would involve an increase in workload in preparing for the night work and cleaning the next morning.

Thus, the unions' insistence on the retention of the marketing hour restriction was based upon its desire to protect its right not to work at night, and to protect its work from being taken by others. Those facts and circumstances are inimicable to plaintiff's theory that the unions insisted on the restriction as the tool of the employer group and at their behest. On the contrary, the evidence established that the restriction was imposed after arm's length bargaining, including an overwhelming strike vote against night work, and was fashioned exclusively by the unions to serve their own interests—how long and what hours members shall work, what work they shall do, and what pay they shall receive. These are not objects which the anti-trust laws proscribe. They are conditions of em-



ployment, and as such are clearly within the labor exemption of the Sherman Act. (*Adams Dairy Co. v. St. Louis Dairy Co.*, 260 F. 2d 46; *Telegraphers v. Chi. & N. W. R. Co.*, 362 U. S. 330; *Hunt v. Crumbach*, 325 U. S. 821; *U. S. v. Musician's Fed.*, 47 F. Supp. 304, aff'd 311 U. S. 741; *U. S. v. Hutcheson*, 312 U. S. 219.)

Under this analysis the case of *Allen-Bradley Co. v. Union*, 325 U. S. 797, relied upon by plaintiff, cannot be deemed determinative, since the collective bargaining agreement there looked, not to the terms and conditions of employment, but to price and market control. Certain contractors, manufacturers and unions combined through the medium of collective bargaining agreements to prevent out-of-state electrical equipment from being used locally. Under closed shop agreements the contractors were obliged to purchase equipment solely from local manufacturers, who had closed shop agreements with the union, and the manufacturers were obliged to confine their New York City sales to contractors employing union members. The plan resulted in a protected city market, whereby identical goods were sold at higher prices within the city than 199 outside of it. The court held that although the union

benefited by higher wages from the plan, this was no mere labor dispute, but rather a combination to monopolize trade, control its price and discriminate between customers in violation of the Sherman Act.

Nor does this court find persuasive other cases where the objective and effect of the collective bargaining agreement was to fix prices and control markets. (*United Brotherhood of Carpenters v. U. S.*, 330 U. S. 395; *U. S. v. Women's Sportswear Assoc.*, 336 U. S. 460; *U. S. v. Milk Drivers' Union*, 153 F. Supp. 803; *Phil. Record Co. v. Mfg. Eng'r Assoc.*, 155 F. 2d 799.)

Analogy may be made more appropriately to the *Adams Dairy* case. (*Adams Dairy Co. v. St. Louis Dairy Co.*,



260 F. 2d 46.) Complaint was made there by one dairy that an industry-wide labor contract between the union and other dairies contained a provision raising commissions for longer runs under a point system, which, plaintiff claimed, adversely affected its costs and compelled it to lose its competitive position in violation of the Sherman Act. As in the instant case, the smaller dairies who were made defendants insisted that the contract was negotiated at arm's length; and the unions asserted that they were proceeding in self interest in raising rates for longer runs for this would ease the heavy loads which were damaging to the health of the drivers, and would encourage route splitting, thereby creating more jobs.

The jury found that there was no conspiracy between the union and non-labor groups, and, on review, the court was required to determine, as in the case at bar, whether the contract in and of itself was illegal. In so doing the court examined the purpose of the provision and the 200 circumstances surrounding negotiations. It found that the rate change was resisted by the dairies, and that there was no discussion of plaintiff's particular position in the market. In concluding that the provisions did not violate the Sherman Act, the court predicated its decision on several distinct grounds. Although the contract provision conceivably affected milk prices, as did other conditions in the collective bargaining agreement, it was neither illegal per se as a price-fixing contract, nor ran "unreasonable" restraint of trade under the facts and circumstances of the industry. Furthermore, since there was no conspiracy by the union, which was motivated by labor goals, the provision was within the labor exemption of the Act.

Since the *Adams* case involved the same operative facts as the case before this court, in that there was no conspiracy, but only a controverted provision in a collective

bargaining agreement, which was fashioned by the union in its self interest and imposed upon employers despite their opposition, the case is a cogent precedent supporting the validity of the provision.

The court also finds apposite the statement and determination of the U. S. Supreme Court in *Telegraphers v. Chi. & N. W. R. Co.*, 362 U. S. 330, 362. There the Court held that the union's demand that the collective bargaining agreement specify that positions in existence as of a certain date would not be abolished except by agreement did not violate the Sherman Act. At p. 362 the court stated:

"We cannot agree with the Court of Appeals that the Union's effort to negotiate about the job security of its members represents an attempt to usurp legitimate managerial prerogative in the exercise of business judgment with respect to the most economical and efficient conduct of its operations."

201 Under this rationale, since the record here shows that night meat sales, even in self-service markets, require as a matter of practical operation the services of either butchers or other employees, the unions' insistence on the restriction to protect their work and job security, should be deemed a proper labor goal, and in no way a usurpation of the managerial prerogative. Therefore, that decision further substantiates the conclusion that the marketing hour restriction here, in protecting butchers against night hours and loss of work is within the labor exemption of the Sherman Act.

Even if the restriction on marketing hours were not held to be within the labor exemption, the provision would not necessarily violate the Sherman Act. Its legality would then be adjudged as any other contract between non-labor groups. Since the provision does not direct action held illegal per se, such as price fixing, division of markets, or

the creation of a monopoly (*U. S. v. Socony Vacuum Oil Co.*, 310 U. S. 150, 218; *No. Pac. R. Co. v. U. S.* 356 U. S. 1; cf. *U. S. v. Gas Ret. Ass'n*, 285 F. 2d 688), its legality depends upon whether it creates an "unreasonable" restraint of trade under the particular facts and circumstances relating to the industry (*U. S. v. DuPont de Nemours & Co.*, 351 U. S. 377, 386; *Appalachian Coals Inc. v. U. S.* 288 U. S. 344, 373).

Admittedly, collective bargaining agreements involve some restraint on competition. The mere fact that an agreement restrains competition, however, is not enough to condemn it (*Allen-Bradley v. Local Union*, at p. 81; *Appalachian Coals Inc. v. U. S.*, at p. 360). In the *Appalachian Coal* case the United States Supreme Court stated, "The legality of an agreement . . . cannot be determined by so

simple a test as to whether it restrains competition. 202 Every agreement concerning trade, every regulation of trade restrains." The court then explained that the application of the statute depended upon intent and effect, to be determined by close scrutiny of the condition of the industry, and the purpose and consequences of the restriction in relation to market prices.

The restriction on night sales of fresh meat obviously restrained a small segment of competition. There is no evidence, however, that it in any way destroyed competition among purveyors of fresh meat, created a monopoly, or adversely affected one purveyor more than another. (cf. *Phil. Rec. Co. v. Mfg. Eng'r Co.*, 155 F. 2d 799). Nor did the evidence in any way establish that less meat is consumed in this area, in proportion to population and income, because of the restriction, than in areas where fresh meat is sold at night. In fact, the objective statistics indicated that the restriction had no discernible effect. Furthermore, the doubtful benefits of night operations to the industry was evident from the fluctuating attitude of both the chains and

independents during the course of the various contract negotiations.

With respect to the effect of the restriction on the public, even if the self-service meat departments could operate at night without employees, there is no showing that such operations would result in economies or lower prices. Assuming arguendo the economic validity of the statistical study made by plaintiff's accountant relating to increased profits after night meat sales were undertaken in the stores studied, that study in no way established that lower prices ensued. In contrast to the *Allen-Bradley* case, where the price of electrical equipment was lower outside of New York than in the city because of the offending restriction, in the case at bar there is no evidence that in areas 203 where night operations are in effect the price of meat is lower, or, if so, the difference is due to the night marketing hours.

The only conceivable deleterious effect on the public from the restriction here is that those persons who find it more convenient to shop for meat at night are deprived of that convenience. However, the fact that some consumers would prefer longer than 54 hours during the week within which to buy fresh meat can hardly constitute the basis for holding a restriction on night hours to be an unreasonable restraint of trade. In fact, such a determination would be inconsistent with the decision of the United States Supreme Court holding that a limitation on operating hours imposed by a trade organization was reasonable and did not offend the Sherman Act. (*Chi. Bd. of Trade v. U. S.*, 246 U. S. 246 U. S. 238, 241).

Although the courts are, and should be, responsive to public convenience, they cannot invoke the Sherman Act as a "catch-all" remedy for any dissatisfactions with labor or business operations. There must be a curtailment of the values which the anti-trust laws are designed to promote

*Memorandum.*

before the Act can be applied. (*Apex Hosiery v. Leader*, 310 U. S. 469, 489, 493). According to this record, the purport, history and effect of the controverted provision indicates that it is within the labor exemption of the Sherman Act, unless that exemption be construed with "mutilating narrowness," (*U. S. v. Hutcheson*, 312 U. S. 219, 235), and that it imposed no "unreasonable" restraint on trade.

Since there is no violation of the Sherman Act the court need not consider whether plaintiff sustained any injury to its business, or whether it was in pari-delicto with the defendant unions.

204 The above and foregoing memorandum of the court shall constitute its findings of fact and conclusions of law. An order has this day been entered dismissing plaintiff's complaint.

/s/ Walter J. LaBuy,

*Judge of the United States  
District Court.*

March 22, 1963.



**Minute Order Dismissing Complaint.**

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**UNITED STATES DISTRICT COURT,  
Northern District of Illinois,  
Eastern Division.**

Name of Presiding Judge, Honorable Walter J. LaBuy.

Cause No. 58 C 1415

Date 3-22-63

Title of Cause

Jewel Tea Company, Inc. vs. Local Unions 189, 262,  
320, 546, 571, 638, etc.

Brief Statement of Motion

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of other counsel entitled to notice

Name and Addresses of other counsel entitled to notice and names of parties they represent.

Reserve space below for notations by minute clerk.

Enter Memorandum constituting Findings of Fact and Conclusions of Law. Enter order dismissing Plaintiff's complaint.

(Draft.)

Hand this memorandum to the Clerk.

Counsel will not rise to adress the Court until motion has been called.



IN THE UNITED STATES DISTRICT COURT  
For the Northern District of Illinois,  
Eastern Division.

Jewel Tea Co., Inc.

vs.

Local Unions Nos. 189, 262, 320,  
546, 547, 571 and 638 Amalga-  
mated Meat Cutters and Butcher  
Workmen of North America,  
AFL-CIO, *et al.*

No. 58 C 1415

NOTICE OF APPEAL TO THE COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT.

Clerk, United States District Court,  
United States Court House,  
Chicago, Illinois.

Notice is given that plaintiff, Jewel Tea Co., Inc., hereby  
appeals to the United States Court of Appeals for the  
Seventh Circuit from the judgment entered in this action  
on March 22, 1963 wherein the complaint was dismissed.

/s/ George B. Christensen,

/s/ Fred H. Daugherty,

*Attorneys for*

*Jewel Tea Co., Inc.*

Dated: April 19, 1963.

Winston, Strawn, Smith & Patterson,  
38 South Dearborn Street,  
Chicago 3, Illinois,  
*Of Counsel.*

**207. Attorneys for Defendants are:**

**Leo Segall**

**Asher, Gubbins & Segall**

**130 North Wells Street**

**Chicago 6, Illinois.**

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**912 Dupont Circle Building, N.W.**

**Washington 6, D.C.**

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**Eardley & Ward**

**105 South La Salle Street**

**Chicago 3, Illinois.**

**Libit, Lindauer and Henry**

**77 West Washington Street**

**Chicago 2, Illinois.**

112 IN THE UNITED STATES DISTRICT COURT.

• • (Caption—58-C-1415) • •

## MEMORANDUM.

In an opinion reported as *Jewel Tea Co. v. Local Unions, etc.*, 274 F. 2d 217 (7th Cir. 1960) the complaint in this case survived defendants' attack. That opinion, describing the nature of this action, also examines significant elements of the complaint. It should, however, be noticed that the Court of Appeals was simply evaluating and testing pleadings on an interlocutory appeal. After affirmance and remand, various defendants filed answers and this cause proceeded to trial on the merits before the Court, sitting without a jury.

## I.

When the plaintiff rested, after introducing parol and documentary evidence, Charles Bromann and Associated Food Retailers of Greater Chicago, Inc., defendants, moved to dismiss this action (T. p. 594). At the same time another motion was made to dismiss the complaint on behalf of the defendant Unions, their named officers, and representatives (T. p. 622). These motions, it is assumed, were interposed under the authority of Rule 41 (b), Fed. R. Civ. P., providing, in part relevant here: "• • • After the plaintiff has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. In an action tried by the court without a jury the court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the

court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a).

Plaintiff grounds its action on 15 U. S. C., § 15, which provides: "Any person who shall be injured in his business or property by reason of *anything forbidden* in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold damages by him sustained, and the cost of suit, including a reasonable attorney's fee." (Emphasis supplied.) Of course, at this stage of the case disposition of defendant's several motions turns upon the state of the plaintiff's evidence in this record. See, e.g., *Penn-Texas Corporation v. Morse*, 242 F. 2d 243 (7th Cir. 1957); *Allred v. Sasser*, 170 F. 2d 233, 235 (7th Cir. 1948).

Jewel has clearly established existence of union contracts under which this plaintiff is prevented from selling meat and meat products before 9:00 A. M. or after 6:00 P. M., Mondays through Saturdays, in its Chicago area stores. Moreover, such meats, if plaintiff were permitted so to do, would be sold pre-packaged via a self-service system.

Turning now to the defendants Associated Food Retailers of Greater Chicago, Inc., and Charles H. Bromann, Associated is a trade association "consisting of several thousand individual or independent food stores engaged in the retail sale of meat for human consumption in the Greater Chicago area." *Jewel Tea Co. v. Local Unions, etc.*, 274 Fed. 2d 217, 222 (7th Cir. 1960). Bromann is allegedly the Secretary and Treasurer of Associated. But the gist of the complaint is that there is and has been a conspiracy among and between Bromann, Associated, and the defendant Unions. Yet, there is wanting any evidence in this record tying in Associated and Bromann as con-

spirators. Bromann apparently conducts collective bargaining for and on behalf of Associated, which enjoys the industry wide contract.

115 From 1957 Jewel sought exclusion of the restriction on night sales, and the Union bargaining group resisted (T. P. 122). And the rest of the Industry agreed with the defendant Unions to continue the ban on night operations (T. P. 122). Yet, realistically speaking, there is absent any evidence showing Bromann or Associated, or both, conspired with the defendant Unions in forcing the restrictive clause upon Jewel. One would be pyramiding inferences upon inferences in order to find such as a fact.

Jewel's chief evidence was adduced through R. Emmett Kelly, called as an adverse witness, who is assistant business representative for Local 546. Kelly's testimony shows Union activity and is devoid of any significant mention of Bromann and Associated. Moreover, neither of those two defendants is a signatory on the Union Contracts received in evidence.

Accordingly, the motion interposed by Bromann and Associated is allowed.

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## II.

Since Jewel has sought relief from the defendant Unions apart from the theory of conspiracy, the court now denies the defendant Unions' motion to dismiss the complaint.

## III.

Counsel shall prepare suggested findings of fact and conclusions of law as provided in Rule 52(a) for that portion of the case wherein the motion of defendants Bromann and Associated has been sustained. Such findings shall also contain therein an express determination that there is no just reason for delay, in accordance with Rule 54, Fed. R. Civ. P.

*Memorandum of Opinion Dated Nov. 2, 1962.* 685

Judgment on the motion of defendants Bromann and Associated shall be entered accordingly.

Walter J. La Buy,  
*District Judge.*

Dated: November 2, 1962.



[fol. 687]

[File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

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No. 14119

JEWEL TEA COMPANY, INC., Appellant,

vs.

ASSOCIATED FOOD RETAILERS OF GREATER CHICAGO, INC., and  
CHARLES H. BROMANN, Appellees.

and

No. 14196

JEWEL TEA COMPANY, INC., Appellant,

vs.

LOCAL UNIONS NO. 189, 262, AMALGAMATED MEAT CUTTERS  
AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO,  
Appellees.

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MOTION OF APPELLEES IN NO. 14119 TO JOIN IN BRIEF OF  
APPELLEES IN NO. 14196—Filed December 31, 1963

Now comes Associated Food Retailers of Illinois, Inc. (formerly known as Associated Food Retailers of Greater Chicago, Inc.) and Charles H. Bromann, Appellees in No. 14119 by their attorneys and moves this Honorable Court to enter an order allowing the brief about to be filed by Appellees in No. 14196 to stand as Appellees' brief in No. 14119.

Sidney M. Libit, One of the attorneys for Appellees in No. 14119.

[fol. 688] Certificate of Service (omitted in printing).

[fol. 689]

[File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

---

No. 14119

JEWEL TEA COMPANY, INC., Appellant,

v.

ASSOCIATED FOOD RETAILERS OF GREATER CHICAGO, et al.,  
Appellees.

No. 14196

JEWEL TEA COMPANY, INC., Appellant,

v.

LOCAL UNIONS NOS. 189, 262, 320, 546, 547, AND 638, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, et al., Appellees.

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RESPONSE OF APPELLEES IN NO. 14196 TO MOTION OF APPELLEES IN NO. 14119 TO HAVE "THE BRIEF ABOUT TO BE FILED BY APPELLEES IN NO. 14196 TO STAND AS APPELLEES' BRIEF IN NO. 14119"—Filed January 4, 1964

Appellees in No. 14196 do not object to reliance by appellees in No. 14119 upon the brief to be filed by appellees in No. 14196. However, appellees in No. 14196 wish it to be clearly and distinctly understood that their attorneys do not represent appellees in No. 14119, that the brief for appellees in No. 14196 is not being prepared in coopera-

tion or consultation with appellees in No. 14119 or the [fol. 690] latter's attorneys, and that appellees in No. 14196 are in no wise associated with appellees in No. 14119 in the conduct of this litigation.

Respectfully submitted,

Leo Segall, 130 North Wells Street, Chicago 6, Illinois;

Bernard Dunau, 912 Dupont Circle Building, Washington, D. C. 20036;

Robert C. Eardley, 105 S. LaSalle Street, Chicago 3, Illinois,

Attorneys for the Defendant Unions and Their  
Named Officers and Representatives.

[fol. 691] Certificate of Service (omitted in printing).

[fol. 692]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

Before: Hon. Elmer J. Schnackenberg, Circuit Judge.

Appeals from the United States District Court for the  
Northern District of Illinois, Eastern Division..

No. 14119

JEWEL TEA COMPANY, Plaintiff-Appellant,

vs.

ASSOCIATED FOOD RETAILERS OF GREATER CHICAGO, INC. and  
CHARLES H. BROMANN, Defendants-Appellees.

No. 14196

JEWEL TEA COMPANY, Plaintiff-Appellant,

vs.

LOCAL UNIONS Nos. 189, et al., Defendants-Appellees.

ORDER GRANTING LEAVE TO JOIN IN BRIEF, ETC.—

January 6, 1964

This matter comes before the Court on the motion of appellees in appeal No. 14119 to join in the brief of appellees in No. 14196, and the written response of appellees in No. 14196 that they do not object to said motion, and the appellant having advised the Court that he has no objections to said motion.

On consideration whereof, It Is Hereby Ordered that the said motion be granted, and leave is hereby granted to Associated Food Retailers of Illinois, Inc., et al., appellees in appeal No. 14119 that the brief about to be filed by appellees in appeal No. 14196 stand as the appellees' brief in appeal No. 14119.

[fol. 693]

In the

# United States Court of Appeals

## For the Seventh Circuit

Nos. 14119, 14196

SEPTEMBER TERM, 1963

APRIL SESSION, 1964

JEWEL TEA COMPANY, INC., a New  
York corporation,  
*Plaintiff-Appellant.*

No. 14119

v.

ASSOCIATED FOOD, RETAILERS OF  
GREATER CHICAGO, INC., an Illinois  
corporation, and CHARLES H. BRO-  
MANN,  
*Defendants-Appellees.*

JEWEL TEA COMPANY, INC., a New  
York corporation,  
*Plaintiff-Appellant.*

No. 14196

v.

LOCAL UNIONS NOS. 189, 262, 320,  
546, 547, 571 and 638, AMALGAM-  
ATED MEAT CUTTERS AND BUTCHER  
WORKMEN OF NORTH AMERICA,  
AFL-CIO, et al.,  
*Defendants-Appellees.*

Appeals from the  
United States Dis-  
trict Court for the  
Northern District  
of Illinois, Eastern  
Division.

OPINION—April 27, 1964

Before HASTINGS, *Chief Judge*, and DUFFY and SCHNACK-  
ENBERG, *Circuit Judges*.

SCHNACKENBERG, *Circuit Judge*. Jewel Tea Company,  
Inc., a New York corporation, plaintiff, has appealed from  
judgments entered by the district court, after our remand  
in case No. 12653.<sup>1</sup>

<sup>1</sup> 274 F. 2d 217 (1960); cert. den., 362 U. S. 936.

[fol. 694]

This action is for a declaratory judgment and seeks relief under the Sherman Act. 15 U.S.C.A. §§ 1 and 2.

At a trial, the district court dismissed defendants Associated Food Retailers of Greater Chicago, Inc., an Illinois corporation, and Charles H. Bromann, its secretary, at the close of plaintiff's case,<sup>2</sup> which action is attacked in No. 14119, and dismissed the complaint as to the defendants Local Unions Nos. 189, 262, 320, 346, 347, 371 and 638 of Amalgamated Meat Cutters and Butcher Workmen of North America AFL-CIO and certain officers and representatives of the unions as named in our opinion in case No. 12653, at the close of all the evidence,<sup>3</sup> which action is attacked in No. 14196. The appeals have been consolidated here.

Plaintiff contends that the district court erroneously failed to follow the law of the case and the principles of antitrust law, and disregarded the arbitrary and unreasonable nature of the restraint (imposed by defendants on plaintiff's business) and the magnitude of its effect on trade. Defendants urge that plaintiff failed to prove a conspiracy, and that union activity to attain market operating hours is a reasonable regulation of trade not within the prohibition of the Sherman Act, and does not restrain interstate commerce. Also, they argue that plaintiff failed to prove injury to its business or property and that it is *in pari delicto*.

In our prior opinion, at 221, we said:

"Facts set forth in the complaint show a widespread public demand in the Chicago area that meat be available for retail purchase at Jewel stores during one or more evenings of the week. Plaintiff has an untrammelled right to determine its course of action in respect to this matter.

"Whether one system of marketing or another offers the greater good and better prices in any given community is to be determined by the public; the laws of free competition may not be thwarted by a combination of employers and unions who conspire to prevent commercial development."

The evidence admitted by the district court on remand is in the record now before us. It sustains the material

<sup>2</sup> 215 F. Supp. 837.

<sup>3</sup> *Ibid.* 839.



[fol: 695]

allegations of the complaint. There are no factual disputes revealed by the evidence. No question as to the credibility of any witnesses on any issue which we consider relevant, has been raised. Therefore, our holding of the law on the facts as stated in the complaint we now adopt as our holding of the law as applied to the evidence upon remand. Especially do we reaffirm our rejection of defendants' contention that an agreement pertaining to market operating hours is exempt from the antitrust laws since it was entered into in the self-interest of the employees to attain or maintain conditions deemed by the union relevant to the employees' working welfare. Significantly, we then quoted from *Allen Bradley Co. v. Local Union No. 3, IBEW*, 325 U. S. 797 (1945), where the exemption was qualified, the court stating at 808-810:

... Congress never intended that unions could, consistently with the Sherman Act, aid non-labor groups to create business monopolies and to control the marketing of goods and services.

"Our holding means that the same labor union activities may or may not be in violation of the Sherman Act, dependent upon whether the union acts alone or in combination with business groups. \* \* \* (Emphasis supplied.)

The district court sought to support its decision by citing the fact that, as a result of collective bargaining between the meat butchers and the retailers in 1920, they entered into an agreement which covered many questions in dispute, including a limitation on marketing hours. The court points out that when plaintiff came into the Chicago area in 1933, it entered into similar agreements with defendant unions. Such agreements did follow in succession until 1957 when plaintiff raised and insisted upon the position it takes in this case. Plaintiff in 1957, 1959 and 1961 sought an agreement on evening operations. It was unsuccessful.

The district court states as its principal finding that the "restriction [against evening hours] was imposed after arm's length bargaining. \* \* \* These are not objects which the anti-trust laws proscribe. They are conditions of employment, and as such are clearly within the labor exemption of the Sherman Act. \* \* \* We cannot agree. To make a business succeed, thereby furnishing employ-

[**¶** 696]

ment to persons engaged in its operation, the responsibility rests upon the employer to determine where the business will be located, his acquisition of necessary buildings and fixtures, the installation of the business and its subsequent maintenance, his establishment of credit with suppliers of commodities and the various other responsibilities resting upon a proprietor. One of the proprietary functions is the determination of what days a week and what hours of the day the business will be open to supply its customers. Among the decisions which the proprietor must make and upon which his success and the livelihood of his employees depend is how to attract customers, which must be accomplished by the quality of merchandise offered at such times as shall be convenient to the public.\* It follows clearly that whether fresh meats are to be sold after 6 P.M. depends upon the convenience and requirements of the people living within shopping distance of the place of business. The hours of the day when his business is to be open to accommodate the demands of customers, in the judgment of the owner of the business, is not a condition of employment, contrary to the district court's finding. As long as all rights of employees are recognized and duly observed by the employer, including the number of hours per day that any one shall be required to work, any agreement by a labor union, acting in concert with business competitors of the employer, designed to interfere with his operation of a retail business, engaged in handling products in the course of interstate commerce, is a violation of the Sherman Act, and not entitled to the exemption therefrom claimed by the defendant unions in this case.

The district court overlooks the fact that whether the butchers have jobs at all depends on whether they will serve the demands of the public. It also overlooks that the furnishing of a place and advantageous hours of employment for the butchers to supply meat to customers are the prerogatives of the employer. As we said (274 F. 2d at 221):

“ \* \* \* An employer has the right and it is his duty, if he is to survive commercially, first to determine the needs of the public, second to provide a time, a

\* The district court summarily disposed of the effect on the public of evening shopping for fresh meat, by saying:

“The only conceivable deleterious effect on the public from the restriction here is that those persons who find it more convenient to shop for meat at night are deprived of that convenience. \* \* \*

[fol. 697]

place and facilities for meeting those needs, and third to provide, under the terms of the National Labor Relations Act, the services of employees to accomplish the foregoing objectives. The rights of labor attach only to the *third*, and if any effort is made by labor to infringe rights of the employer in the first or second field, it is not shielded from the sword of the anti-trust laws. Determining the needs of the public and meeting those needs are inherent proprietary rights and obligations of the employer and must be clearly distinguished from his rights and duties as master in the master and servant relationship. Setting marketing hours is one such proprietary function which an employer has the exclusive right to determine as dictated by economic factors present within his trading area." (Italics supplied.)

Defendants would apply to their purpose *Board of Trade v. United States*, 246 U. S. 231 (1918). In that case the court found that a rule of the Chicago Board of Trade had only a slight effect as a restriction upon free competition in the pricing of grain and, at 240, said that it "created a public market for grain 'to arrive' ". It pointed out that it provided an improvement in actual market conditions, in several specific ways and thus was promotive of competition rather than destructive thereof in its actual effect.

There is *no* evidence in *this* record showing that the net effect of the market hours restraint promotes competition. The opinion of the district court is devoid of *any* finding to that effect. On the contrary, the record shows that the effects of the restriction are wholly negative and destructive of competition. Even the district court expressly found that the restriction "obviously restrained a small segment of competition". We believe that the market hours restriction cannot come within the rule of reason announced in *Chicago Board of Trade v. United States*, *supra*. Moreover, a case concerned with the problems of a specialized commodity exchange and a rule thereof which was affirmatively found to have *promoted* competition is scarcely authority for upholding a restraint which seriously suppresses and interferes with competitive forces in a widespread retail marketing area. The district court's reliance on *Chicago Board of Trade* was, therefore, not justified.

In the case at bar, during oral argument, we were surprised by unions' counsel, who, while emotionally main-

[fol. 698]

taining that union butchers should be given an opportunity to be with their children on Friday evenings, spurned a suggestion that other fathers in Chicago and its suburbs might desire to be at home with *their* children, while their wives took the family car to do their meat shopping on that evening. But defendants' counsel was positive that, in considering the application of the antitrust laws, the convenience and welfare of the public are irrelevant.

The evidence on remand supports the allegations of the complaint charging that the unions and the Associated Food Retailers of Greater Chicago, Inc., defendants, effectuated through a contract, an unreasonable restraint of trade. By detailed and persuasive evidence plaintiff has shown that, as a result, it has been injured in its business and property. The fact of defendants' unlawful restraint on interstate commerce is supported by convincing evidence.

As to the assertion that plaintiff is *in pari delicto*, we decided on the prior appeal, 274 F. 2d 217, 223:

"Appellants next assert that plaintiff is without standing to sue because, as a party to the alleged illegal agreement it is *in pari delicto*. Appellants concede, however, that the *in pari delicto* defense does not apply where plaintiff's participation in the wrong alleged was induced by economic necessity, or where plaintiff's wrongful act is divorced from the illegal conspiracy, agreement or combination alleged in the complaint.

"\* \* \* When a business organization is the victim of an *illegal conspiracy* between certain of its competitors and a labor union to restrain trade, the business organization is not required to fight the matter out by economic warfare thus subjecting its employees who are not members of the offending union, its customers, and its stockholders, to the losses, inconvenience and damages of a strike, all for the purpose of shielding itself from the *in pari delicto* stigma.

"In view of the factual situation which confronted plaintiff, the defense of *in pari delicto* is not available here. \* \* \*

We adhere to those views.

Plaintiff's complaint charged that defendants engaged in an unlawful combination and conspiracy to suppress competition among retail meat markets in the Chicago area

[fol. 699]

and to prevent the sale of meat before 9 A.M. or after 6 P.M. Mondays through Saturdays.

In view of the facts in this case as shown by the evidence, it is clear that plaintiff proved that the unions, Associated Food Retailers and Bromann, its secretary, entered into a combination or agreement, which constituted a conspiracy, as charged in the complaint. It was therefore illegal and void because violative of the Sherman Act. *Allen Bradley Co. v. Local Union No. 3, supra*; cf. *United States v. Hutcheson*, 312 U. S. 219, 232 (1941).

In *Interstate Circuit, Inc. v. United States*, 306 U. S. 208, 227 (1939), the court said:

“ \* \* \* Acceptance by competitors, without previous agreement, of an invitation to participate in a plan, the necessary consequence of which, if carried out, is restraint of interstate commerce, is sufficient to establish an unlawful conspiracy under the Sherman Act. \* \* \* ”

In *Brotherhood of Carpenters v. United States*, 330 U. S. 395 (1947), the court used the words “conspiracy” and “contract” interchangeably.

The district court in the case at bar found that “From 1957 Plaintiff sought exclusion of the restriction on night sales from the industry-wide contract, and the Defendant Local Unions resisted such exclusion. The rest of the Industry agreed with the Defendant Local Unions to continue the ban on night operations.” (Italics supplied.)

The agreement between the unions and Associated Food Retailers is still operative as shown by their common defense in this case.<sup>5</sup> Whether it be called an agreement, a contract or a conspiracy, is immaterial.

For the reasons above stated, we reverse the judgment of the district court dismissing the case as to defendants Associated Food Retailers of Greater Chicago, Inc. and Charles H. Bromann, and the judgment of that court dismissing the case as to all other defendants therein, and we direct, in case No. 14119, that said case be remanded to the district court for such further proceedings as may be consistent with this opinion; and in case No. 14196 we

<sup>5</sup> We granted Associated's motion that the Unions' brief stand as the brief of Associated and Bromann, its secretary.

Likewise, in our prior opinion, 274 F. 2d 217, 222, note 4, we said:

“Associated and Bromann have entrusted their interests in the defense of this suit to counsel for the unions. They formally adopted by reference the latter's motions and briefs.”



[fol. 700]

direct that said case be remanded to the district court to enter a declaratory judgment and an injunction substantially as prayed in the complaint herein and to ascertain and award to plaintiff such monetary relief as may be appropriate under this court's opinion.

**REVERSED AND REMANDED  
WITH DIRECTIONS.**



[fol. 701]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

Before: Hon. John S. Hastings, Chief Judge, Hon. F. Ryan Duffy, Circuit Judge, Hon. Elmer J. Schnackenberg, Circuit Judge.

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

---

No. 14119

JEWEL TEA COMPANY, INC., a New York corporation,  
Plaintiff-Appellant,

vs.

ASSOCIATED FOOD RETAILERS OF GREATER CHICAGO, INC., an Illinois corporation, and CHARLES H. BROMANN, Defendants-Appellees.

---

No. 14196

JEWEL TEA COMPANY, INC., a New York corp.,  
Plaintiff-Appellant,

vs.

LOCAL UNIONS NOS. 189, 262, 320, 546, 547, 571 AND 638, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, et al., Defendants-Appellees.

---

JUDGMENT—April 27, 1964

This cause came on to be heard on the transcript of the record from the United States District Court for the North-

ern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court dismissing the case as to defendants Associated Food Retailers of Greater Chicago, Inc. and Charles H. Bromann, and the judgment of that Court dismissing the case as to all other defendants therein be, and the same is hereby, REVERSED, with costs. It Is further ordered that case No. 14119 be, and the same is hereby REMANDED to the said District Court for such further proceedings as may be consistent with the opinion of this Court filed this day; and that case No. 14196 be, and the same is hereby REMANDED to the said District Court with directions to enter a declaratory judgment and an injunction substantially as prayed in the complaint herein and to ascertain and award to plaintiff such monetary relief as may be appropriate under the opinion of this Court filed this day.

[fol. 702] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 703]

SUPREME COURT OF THE UNITED STATES

No. 240—October Term, 1964

---

LOCAL UNION No. 189, AMALGAMATED MEAT CUTTERS, AND  
BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, et al.,  
Petitioners,

vs.

JEWEL TEA COMPANY, INC.

---

ORDER ALLOWING CERTIORARI—October 12, 1964

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted limited to Questions 1 and 2 presented by the petition which read as follows:

"1. Based on the District Court's undisturbed finding that the limitation 'was imposed after arm's length bargaining, . . . and was fashioned exclusively by the unions to serve their own interests—how long and what hours members shall work, what work they shall do, and what pay they shall receive' (R. 672), whether the limitation upon market operating hours and the controversy concerning it are within the labor exemption of the Sherman Antitrust Act.

"2. Whether a claimed violation of the Sherman Antitrust Act which falls within the regulatory scope of the National Labor Relations Act is within the exclusive primary jurisdiction of the National Labor Relations Board."

The case is placed on the summary calendar and set for oral argument immediately following No. 48.

October 12, 1964

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

LIBRARY  
SUPREME COURT, U. S.

## TRANSCRIPT OF RECORD

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*Exhibit Volume*

Supreme Court of the United States

OCTOBER TERM, 1964

No. 240

---

LOCAL UNION NO. 189, AMALGAMATED MEAT CUT-  
TERS AND BUTCHER WORKMEN OF NORTH  
AMERICA, AFL-CIO, ET AL., PETITIONERS,

vs.

JEWEL TEA COMPANY, INC.

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SEVENTH CIRCUIT

---

PETITION FOR CERTIORARI FILED JULY 2, 1964  
CERTIORARI GRANTED OCTOBER 12, 1964

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 240

LOCAL UNION NO. 189, AMALGAMATED MEAT CUT-  
TERS AND BUTCHER WORKMEN OF NORTH  
AMERICA, AFL-CIO, ET AL., PETITIONERS,

vs.

JEWEL TEA COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
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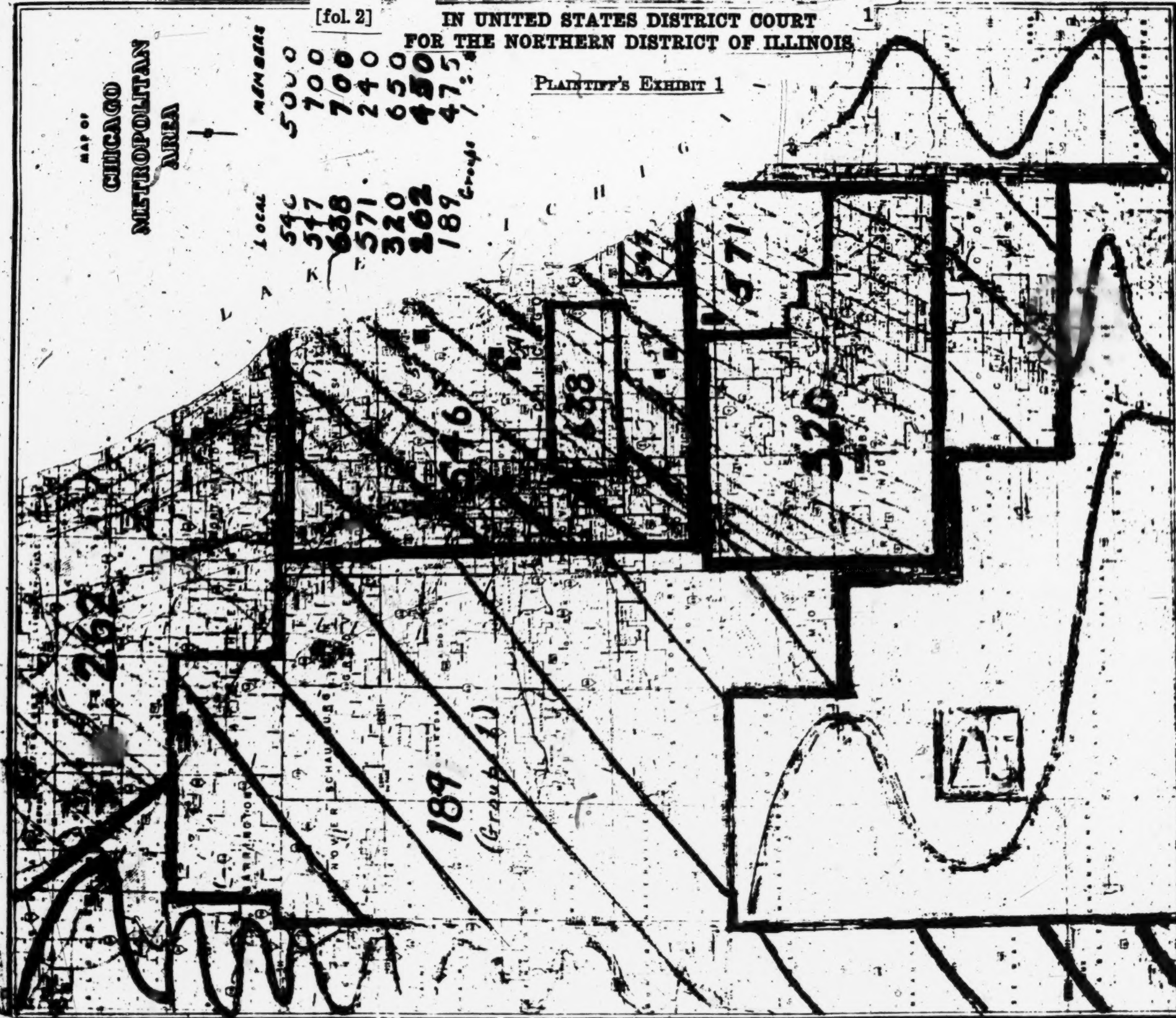
MAP OF  
CHICAGO  
METROPOLITAN  
AREA

[fol. 2]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

PLAINTIFF'S EXHIBIT 1

LOCAL	MEMBERS
546	5000
547	700
638	700
571	240
320	650
262	450
189	475



AMALGAMATED MEAT CUTTERS

Affiliated with  
AMERICAN FEDERATION OF LABOR  
MINNEAPOLIS FEDERATION OF LABOR  
CHICAGO FEDERATION OF LABOR

FILED 58C145

MAY 28 1963

R. EMMETT KELLY, SECRETARY-TREASURER  
TELEPHONE FRANKLIN 2-0030

DOCKETED

130 NORTH WELLS ST. AT 12 O'CLOCK  
ELBERT A. WAGNER, JR.  
CLERK 606 • CHICAGO 6, ILLINOIS

February 2, 1954.

Dear Sir and Brother:

BACK TO THE "HORSE AND BUGGY" DAYS?

Recent newspaper articles being prepared by the heavy chain store advertisers indicate a campaign to bring about night meat sales.

THIS IS GOING BACKWARD AT LEAST FORTY YEARS

A very few greedy chain stores in Chicago and suburbs who only want to squeeze the small operator to death are now screaming that in the interest of "Mrs. Housewife" they must keep their meat markets open at night.

The interest of these major chains is not the public and never was. They only want more of the dollars on pay-day, but they can't say that, so they make it look like they want to do the customer a favor instead.

It's a matter of official record that in an employer-labor negotiating meeting of some three years ago, the representative of Jewel Foods (who was the Secretary of the company) stated "The reason we want night opening on Friday night is to get first whack at that pay check before the buyer can find other places to spend it".

True American ideals call for a free enterprise system wherein our members should have rightful opportunity of someday owning their own business. Under the selfish chain store plan this becomes next to impossible because they are attempting to "gobble up" every possible last dollar from the consuming public.

Reliable information at hand proves that at least three of the four major chains have joined hands in a concerted plan to turn the buying public against the meat cutters' Union. This is being done in the face of a Contract that sets forth the closing hour of 6 P. M. and still has another eight months to run.

PLAINTIFF

IN UNITED STATES  
FOR THE NORTHERN

[fol. 3]



February 2, 1954.

Dear Sir and Brother:

BACK TO THE "HORSE AND BUGGY" DAYS?

Recent newspaper articles being prepared by the heavy chain store advertisers indicate a campaign to bring about night meat sales.

THIS IS GOING BACKWARD AT LEAST FORTY YEARS

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Reliable information at hand proves that at least three of the four major chains have joined hands in a concerted plan to turn the buying public against the meat cutters' Union. This is being done in the face of a Contract that sets forth the closing hour of 6 P. M. and still has another eight months to run.

You as a member of this organization have clearly demonstrated your feelings in this regard on many occasions when you voted down such proposals in our Contract meetings. The Union office has a permanent file on such votes in the nature of a wire recording it has made for this purpose.

Don't be misled into changing your minds by any picture that supervisors might paint regarding additional money you might earn. Mr. E. E. Hargrave, a Vice-President of Jewel Foods has already said "that self-service meats

[fol. 3]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

PLAINTIFF'S EXHIBIT 2

would only require the services of one meat cutter between 6:00 and 9:00 P. M. So, you who work all day long and don't have enough to do should cut additional meat, to be sold at night without your gaining financially in any way.

Reporters from the newspapers handling chain store advertising have distorted and misquoted statements from your Union so as to make the employer look good and your Union bad. They will not print the true picture because they want the millions of dollars they profit from that advertising. If the chains really want to lower the cost of meat, as they say, why don't they shut off some of this foolish advertising (which nobody reads) and show it in a decrease in the prices of meat?

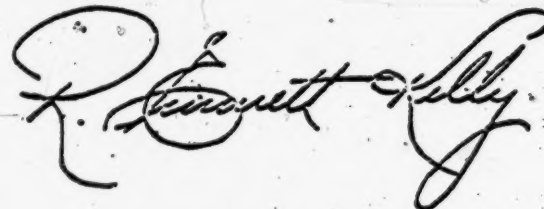
This is not the "gas light era", nor is it the "days of the steam calliope" when this Union, thirty and forty years ago, went around to the markets and closed them down at decent hours.

We have no intention of going backward to please "big capital" unless you as Union members want it that way. We think that when you voted for "no night operation" you were voting for your home life and the American right to share your time with your families.

It's just too bad that we can't get the proper cooperation from the Retail Clerks so that we could make this unanimous. It certainly would be easier if we could.

In conclusion permit me to state that we've done it alone in the past and will if necessary in the future. With your solid support and cooperation Chicago and Suburbs will always close every night of the week at the Union closing hour of 6 P. M.

Fraternally yours,



Secretary-Treasurer

REK:h  
osiu 28

[fol. 4]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

PLAINTIFF'S EXHIBIT 3



PURSUANT TO AGREEMENT



*with*

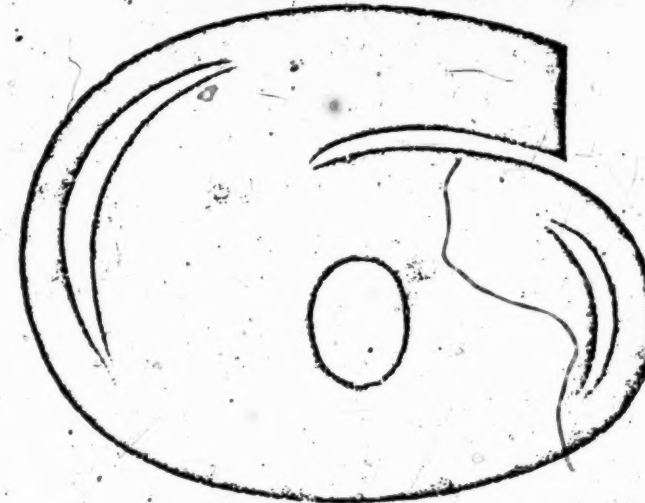
AMALGAMATED



MEAT CUTTERS

Market  
Closed

AFTER



P.M.

FINED 50 CENTS  
POCKETED

MAY 28 1963

AT 10 O'CLOCK  
ALBERT A. WAGNER, JR.  
CLERK  
Pg. Ex. 3.



FILED

1959-61

EX. 6

MAY 28 1963

58C1415

DOCKETED

AMALGAMATED MEAT CUTTERS

130 NORTH WELLS STREET • FRANKLIN 2-0030 • CHICAGO 6

AFFILIATED WITH THE  
AFL-CIO  
ILLINOIS FEDERATION OF LABOR  
CHICAGO FEDERATION OF LABOR

R. EMMETT KELLY  
SECRETARY-TREASURER



**SERVICE CONTRACT**  
**AMALGAMATED MEAT CUTTERS AND B. W. OF N. A.,**  
**AFL-CIO**

**Articles of Agreement** governing Service Meat Markets in the City of Chicago and County of Cook, entered

into between  
hereinafter called the "Employer," all meat markets and chain store meat markets, all combination Grocery and Meat Markets in Chicago and County of Cook; and the AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 546 (AFL-CIO) acting as the Collective Bargaining Agent for its members. This Contract approved and passed by the International Executive Board at the General Office the 5th day of January, 1960.

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PLAINTIFF'S EXHIBIT

FOR THE NORTHERN DISTRICT

# **SERVICE CONTRACT** **AMALGAMATED MEAT CUTTERS AND B. W. OF N. A.,** **AFL-CIO**

## **Articles of Agreement** governing Service Meat Markets in the City of Chicago and County of Cook, entered

into between hereinafter called the "Employer," all meat markets and chain store meat markets, all combination Grocery and Meat Markets in Chicago and County of Cook; and the AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 546 (AFL-CIO) acting as the Collective Bargaining Agent for its members. This Contract approved and passed by the International Executive Board at the General Office the 5th day of January, 1960.

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### **ARTICLE 1. GENERAL**

Section 1. *Consideration.* For and in consideration of the mutual promises of the parties hereto and for other good and valuable considerations, receipt of which is hereby acknowledged, this Agreement is entered into.

Section 2. *Scope of Contract.* It is agreed that this Contract shall govern the hours, wages and other conditions of employment of Employer's meat department employees in Service Meat Markets only within the geographical jurisdiction of Local 546, and that the hours, wages and other conditions of employment of Employer's meat department employees in Self-Service

[fol. 6]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

PLAINTIFF'S EXHIBIT 6

Meat Markets are covered by a separate contract. It is further agreed that the Employer shall have the sole discretion of determining from time to time which system of merchandising, service or self-service, shall be utilized in each of the Employer's markets; provided that the Employer shall comply with the wages, hours and other contractual conditions of employment pertaining to the system of merchandising used in that market.

### Section 3. Definitions.

(a) *Apprentice*: An apprentice is an employee who is in training to become a Journeyman butcher. Apprentices must be at least sixteen (16) years of age.

(b) *Journeyman*: After serving three (3) years of apprenticeship, an employee shall be classified as a Journeyman meat cutter and shall receive the Journeyman rate of pay.

(c) *Head Meat Cutter*: The term "Head Meat Cutter" means a Journeyman meat cutter who is responsible for the efficient management of the market.

(d) *Self-Service and Service*: A self-service market is one in which fresh beef, veal, lamb, mutton or pork are available for sale on a pre-package self-service basis. It is agreed that any market which is operated on a partially service and partially self-service basis shall be classified as a self-service market if any fresh beef, veal, lamb, mutton or pork are made available for sale on a pre-package self-service basis, even though there is also a service counter offering custom cutting for those who prefer it. Such semi-self-service market shall be considered a self-service market subject to the terms and conditions and wage scale contained in the Self-Service Contract.

If no fresh beef, veal, lamb, mutton or pork are sold on a self-service basis, then the market is a Service Market and shall be operated in accordance with this Service Contract. It is further expressly understood and agreed that if all fresh beef, veal, lamb, mutton and pork sold by a market are handled and sold on a service basis only, the fact that a market handles and sells on a self-service basis, delicatessen and other meat products now excepted from the jurisdiction of the Union under this Service Contract shall not operate to classify such market as a self-service market; but such semi-self-service market shall nevertheless be considered a service market subject only to the wage scales, hours and other conditions provided in this Service Contract.

In the event of any dispute as to whether a meat market shall be classed as a service market subject to the terms and conditions of this Service Contract or a self-service market subject to the terms and conditions of the Self-Service Contract, the decision of the Union shall be binding unless and until said decision has been set aside by any arbitration proceedings; provided, however, that either party may require that such dispute be submitted to arbitration forthwith.

Section 4. *Notices*. All notices required under this Contract shall be deemed to be properly served if delivered in writing personally or sent by certified mail to the offices of the Union at 130 North Wells Street, Chicago 6, Illinois, or to the Employer at the address designated below, or to any subsequent address which the Union or the Employer may designate in writing for such purpose. Date of service of a notice served by mail shall be the date on which such notice is post-marked by a post-office of the United States Post Office Department.

Section 5. *Partial Invalidity*. Nothing contained in this Agreement is intended to violate any Federal Law, Rule, or Regulation made pursuant thereto. If any part of this Agreement is construed to be in such violation, then that part shall be made null and void and the parties agree that they will immediately begin negotiations to replace said void part with a valid provision.

Section 6. *Authority of Signing Parties*. The parties hereto certify that they are empowered and duly authorized to sign this Agreement.

Section 7. *Successors and Assigns*. This Agreement shall be binding upon the Employer herein and its successors and assigns.

## ARTICLE 2. JURISDICTION

The Employer recognizes and agrees that said Union is and shall be the sole and exclusive collective bargaining agency for and on behalf of all meat cutters and butcher workmen employed by said Employer on their premises; including those workers processing, packing, wrapping and selling frozen fresh meats.

The parties agree that all fish, poultry, rabbits, meats and its kindred products, fresh or frozen, except:

- (a) sliced boiled, baked or barbecued ham;
- (b) sliced packaged bacon;
- (c) sliced packaged dried beef;
- (d) sliced packaged Canadian bacon;
- (e) smoked sausage, smoked butts, smoked ribs and smoked hocks;
- (f) canned and glassed meats of all kinds;
- (g) all ready-to-eat-prepared meats; poultry, and fish;
- (h) frozen packaged fish;



efficient management of the market.

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[fol. 7]

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The parties agree that all fish, poultry, rabbits, meats and its kindred products, fresh or frozen, except:

- (a) sliced boiled, baked or barbecued ham;
- (b) sliced packaged bacon;
- (c) sliced packaged dried beef;
- (d) sliced packaged Canadian bacon;
- (e) smoked sausage, smoked butts, smoked ribs and smoked hocks;
- (f) canned and glassed meats of all kinds;
- (g) all ready-to-eat prepared meats, poultry, and fish;
- (h) frozen packaged fish;
- (i) frozen specialty meat items such as frozen and formed (flaked or chopped) patties and choppettes, with or without butter or vegetable, breaded or unbreaded;
- (j) All meats NOT for human consumption;

will be sold, cut, prepared and fabricated by meat department employees, and said cutting, preparing, fabricating and packing of above products into retail cuts will be done on the premises or immediately adjacent thereto.

Frozen fresh poultry, cut-up or whole, fresh pork sausage, the frozen specialty meat items described above and vacuum or comparably tight wrapped ham slices, shanks and butts may be prepared by the packer, supplier or employer off the premises. Frozen fresh poultry, fresh poultry (cut-up or whole) processed on the premises, fresh pork sausage and the frozen meat specialty items described above may be sold from self-service cases after the market hours prescribed in Article V; provided, however, that such products are priced or pre-priced by meat department employees on the premises.

### ARTICLE 3. WAGES

Section 1. *Wage Rates—Weekly, Extra Day and Overtime.* Not less than the following wages shall be paid to service market employees during the term of this Contract:

(a) FIRST CONTRACT YEAR 10/4/59 THRU 10/1/60	Weekly Wages for Basic Workweek	Extra Day Rates		Hourly Rates*	
		Full Day	Half Day	Str. Time	Overtime
Head Meat Cutter.....	\$124.00	\$26.80	\$13.40	\$3.10	\$4.65
Journeyman .....	117.50	25.50	12.75	2.9375	4.40625
Apprentices:					
0 to 6 Months.....	75.00	17.00	8.50	1.875	2.8125
6 to 12 " .....	79.00	17.80	8.90	1.975	2.9625
12 to 18 " .....	84.00	18.80	9.40	2.10	3.15
18 to 24 " .....	88.00	19.60	9.80	2.20	3.30
24 to 36 " .....	93.00	20.60	10.30	2.325	3.4875

Extra Journeyman—\$117.50 for a basic workweek; \$5.50 per day; \$12.75 per half day.

(b) SECOND CONTRACT YEAR 10/2/60 THRU 10/7/61	Weekly Wages for Basic Workweek	Extra Day Rates		Hourly Rates*	
		Full Day	Half Day	Str. Time	Overtime
Head Meat Cutter.....	\$130.50	\$28.10	\$14.05	\$3.2625	\$4.89375
Journeyman .....	124.00	26.80	13.40	3.10	4.65
Apprentices:					
0 to 6 Months.....	75.00	17.00	8.50	1.875	2.8125
6 to 12 " .....	81.00	18.20	9.10	2.025	3.0375
12 to 18 " .....	87.00	19.40	9.70	2.175	3.2625
18 to 24 " .....	91.00	20.20	10.10	2.275	3.4125
24 to 36 " .....	96.00	21.20	10.60	2.40	3.60

Extra Journeyman—\$124.00 for a basic workweek; \$26.80 per day; \$13.40 per half day.

\*Hourly rates may be rounded off to nearest quarter-cent, half-cent, or whole cent, depending on the Employer's payroll practice.

Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages or working conditions.

Section 2. *Payment of Extra Day Rates.* The extra day and half day rates shall be paid whenever an employee works the sixth (6th) day of a regular workweek or the fifth (5th) day of a holiday week. These rates provide a \$2.00 premium over the average daily rate for a full day and a \$1.00 premium over the average for a half day.

In the event state or federal legislation is enacted during the term of this contract which requires the payment of time and one-half regular hourly rates of pay for all work performed in excess of forty (40) hours in a workweek, then effective on the date such law shall become effective such payment of extra day rates and said extra day rate provision shall cease to have any further effect.

Section 3. *Extra Help.* Extra help shall be paid at the Journeyman extra day rates set out above except in the event that they work the full week when they are to receive the minimum weekly wage set out above for their classification.

### ARTICLE 4. WORKING HOURS AND OTHER CONDITIONS OF EMPLOYMENT

Section 1. *Basic Workday.* Eight (8) hours shall constitute the basic workday, which shall be scheduled to begin no earlier than 8:00 a.m. and to end no later than 6:00 p.m., allowing one hour for lunch, said lunch to begin no earlier than 11:00 a.m. nor end later than 2:00 p.m. This is to apply to all markets whether manned by one or more than one employee. Employees must be dressed and ready for work at the scheduled starting times.

Section 2. *Basic Workweek.* Five (5) days shall constitute the basic workweek, to be worked Monday through Saturday, with one full day off within each shop, for each employee at the Employer's discretion. The day off shall be rotated or changed in accordance with the mutual agreement of the Employer and his employees.

Section 3. *Sixth Day Guarantee.* Any employee called to work on the sixth (6th) day in any regular workweek, shall be guaranteed four (4) hours' work. Reporting time on the sixth day shall be no earlier than 8:00 a.m. for a full day or morning half day, and no earlier than 1:00 p.m. for an afternoon half day. Head Meat Cutters and Journeymen shall be given preference over Apprentices for work on the sixth (6th) full or half day during a regular workweek and on the fifth (5th) full or half day during a holiday week.

Section 4. *Overtime.* At the Employer's discretion overtime may be worked at overtime rates after eight (8) hours in any one

\*This provision is not agreed to by Jewel Tea Co., Inc. unless and until the decision of U.S. Court of Appeals for the 7th Circuit in the case of Local Unions



Contract:

		Weekly Wages for Basic Workweek	Extra Day Rates		Hourly Rates*	
			Full Day	Half Day	Str. Time	Overtime
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	0 to 6 Months.....	75.00	17.00	8.50	1.875	2.8125
	6 to 12 ".....	79.00	17.80	8.90	1.975	2.9625
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\*Hourly rates may be rounded off to nearest quarter-cent, half-cent, or whole cent, depending on the Employer's payroll practice.

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In the event state or federal legislation is enacted during the term of this contract which requires the payment of time and one-half regular hourly rates of pay for all work performed in excess of forty (40) hours in a workweek, then effective on the date such law shall become effective such payment of extra day rates and said extra day rate provision shall cease to have any further effect.

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**Section 4. Overtime.** At the Employer's discretion overtime may be worked at overtime rates after eight (8) hours in any one day and behind locked doors after 6:00 p.m.

**Section 5. Inventory.** Employees shall not take inventory outside of regular working hours.

**Section 6. Restrictions on Apprentices.** Apprentices may be employed at a ratio of not exceeding two (2) for each five (5) Journeymen employed by the Employer within the jurisdiction of the Local. A quarterly report covering the number of Apprentices employed in relationship to the number of Journeymen shall be furnished the Union. Apprentices shall not work part time or as extra men on Saturdays or the day preceding holidays.

This provision is not agreed to by Jewel Tea Co., Inc. unless and until decision of U.S. Court of Appeals 7th Circuit in the case of Local

**Section 8. Clean-up Time.** It is expressly understood that no customer shall be served who comes into the market before or after the hours set forth in Article 5, that all customers in the market at the closing hour shall be served, that all meats will be properly taken care of and the market placed in a sanitary condition. Such work not to exceed fifteen (15) minutes and not to be construed as overtime. Such clean-up time shall not be utilized to prepare for the following day's business and shall not be accumulative from day to day.

**Section 9. Rest Periods.** Each employee shall have two 10-minute rest periods daily, the first to be taken approximately mid-way in the morning and the second to be taken about midway in the afternoon.

## ARTICLE 5. MARKET OPERATING HOURS

\* Market operating hours shall be 9:00 a.m. to 6:00 p.m. Monday through Saturday, inclusive. No customer shall be served who comes into the market before or after the hours set forth above, except that customers in the market at the closing hour shall be served.

## ARTICLE 6. HOLIDAYS, VACATIONS AND OTHER COMPENSABLE ABSENCES

**Section 1. Holidays.** There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day. When and if Victory Day is declared a National Legal Holiday, it shall be made a part of this Article.

Employees who are absent the regularly scheduled workday before, or after, a holiday, or both, except in the case of proven illness or unavoidable absence shall not receive holiday pay, but shall be paid only for the hours actually worked.

During a holiday week the employee shall receive a full week's pay for four (4) days of work; if an employee works the fifth (5th) day during a holiday week, he shall be paid the extra day or half day rates set out in Article 3.

It is agreed that the Head Meat Cutters and Journeymen will be given preference over Apprentices for work on the sixth (6th) full or half day during a regular workweek, and on the fifth (5th) full or half day during a holiday week.

**Section 2. Vacations.** Any employee who has given service for the course of one year shall be entitled to one week's vacation with pay. After two (2) years of service he shall be entitled to two (2) weeks' vacation with pay. All employees having ten (10) years of continuous full-time service shall be entitled to three (3) weeks of vacation with pay. Unless otherwise mutually agreed upon between Employer and employee, vacation weeks shall be taken consecutively. A man relieving a Head Meat Cutter on vacation shall receive the Contract rate of pay for Head Meat Cutters.

Whenever a holiday listed in Section 1 of this Article falls within an employee's vacation period, the employee shall receive an extra day's pay or a subsequent day off, at the Employer's option.

**Section 3. Absences Due to Injuries.** Any regular employee unable to work because of injuries received during the regularly scheduled workweek and whose injuries arose out of or during the course of his employment shall be entitled to a full day's pay for each day lost because of such injuries, but not in excess of four (4) days' pay, including pay for the day of the injury, in the first seven (7) calendar days following the day of the accident; provided, however, that the employee shall report upon receipt of the injury to the Employer's physician whose decision with respect to the length of time required off shall be controlling; provided further, that nothing in this provision shall affect any rights accrued to either party under the State Workmen's Compensation Act, and that the Employer shall receive credit for any payment made under this provision should compensation be awarded by the Industrial Commission of Illinois.

**Section 4. Funeral Leave.** The Employer agrees to pay full-time employees for necessary absence on account of death in the immediate family up to and including a maximum of three (3) scheduled work days at straight time, provided the employee attends the funeral. The term "immediate family" shall mean spouse, parent, child, brother, sister, father-in-law, mother-in-law, or any relative residing with the employee or with whom the employee is residing.

**Section 5. Jury Pay.** When any full-time employee who is covered by this Agreement is summoned for jury service, he shall be excused from work for the days on which he reports for jury service and/or serves. He shall receive for each such day on which he so reports and/or serves and on which he otherwise would have worked the difference between eight (8) times his regular hourly rate of pay and the payment he receives for jury service, if any; provided, however, that no payment shall be made under the provisions of this Article to any employee summoned for jury service unless he shall have advised the Employer of the receipt by him of such jury summons not later than the next regularly scheduled workday after receipt of said summons. Before any payment shall be made to any employee hereunder, he shall present to the Employer proof of his summons for service, and of the time served and the amount of pay received therefor, if he shall have served as juror. The provisions of this Article shall apply only when an employee is summoned for jury duty and shall not apply if an employee volunteers to serve as a juror. When an employee is released for a day or part of a day during any period of jury service, he shall report to his store for work.



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## ARTICLE 7. UNION-MANAGEMENT RELATIONS

Section 1. *Union Employees.* The Union, if requested, will furnish men, insofar as they are available, who will work to the best interest of the Employer in every way, just and lawful, who will give honest and diligent service to patrons of the Employer's establishment, and who will do everything within their power for the uplifting of the meat industry.

Section 2. *Union Shop.* It shall be a condition of employment that all employees of the Employer covered by this Agreement who are members of the Union in good standing on the date on which this agreement is signed shall remain members in good standing and those who are not members on the date on which this Agreement is signed shall, on the thirtieth day following the date on which this Agreement is signed, become and remain members in good standing in the Union. It shall also be a

condition of employment that all employees covered by this Agreement and hired on or after the date on which this Agreement is signed, shall, on the thirtieth day following the beginning of such employment become and remain members in good standing in the Union.

**Section 3. Union Preference.** When permitted by law, the Employer agrees that when in need of help he will give preference to members in good standing in the Union.

**Section 4. Business Representatives.** Union Business Representatives shall be admitted to the Employer's market premises during the hours meat department employees are working for the purpose of ascertaining whether or not this Agreement is being observed and for collecting dues. Such activities shall be conducted in such a manner as not to interfere with the orderly operation of Employer's business. Business Representatives have full authority and approval from both parties to this Agreement to immediately remove and require the discharge of any employee working below the wage scale fixed herein.

**Section 5. Discharge.** No employee shall be discharged without good and sufficient cause; drunkenness, dishonesty, incompetency, incivility or an over supply of help will be sufficient cause for dismissal, or help can be dismissed providing preference be given to Union men in replacing help.

**Section 6. Display of Contract and Union Shop Cards.** This Agreement is to be kept posted in the place of employment so that every employee may have equal and easy access to same.

It will be the duty of the Employer to prominently display Union shop cards in all establishments wherein Union meat cutters are employed. These cards shall remain the property of the Union, and the Employer shall have their usage only until such time as the Union shall request their return. The Employer agrees to surrender same immediately upon demand by the Union.

**Section 7. Withdrawal Cards.** Any member of Local 546 who is in good standing and is in business for himself who may desire to affiliate with the \_\_\_\_\_ may apply for a withdrawal card, provided the request be accompanied by the similar request from the \_\_\_\_\_. Withdrawal card may be obtained upon application to the Executive Board of Local 546.

## ARTICLE 8. GRIEVANCES AND ARBITRATION

**Section 1. No Strike; No Lockout.** The Union and the Employer agree on the need for the continuance of their service to the public without interruption. Both recognize this objective as necessary to the security of the Employer and its people. Both, therefore, specifically pledge themselves to help assure that security by using the procedures agreed upon between them for the adjustment of disputes and grievances in all cases where there is any difference of opinion concerning the rights of either under this contract or the interpretation or application of any provision of it. Therefore, subject to the exceptions stated herein, during the term of this agreement there shall be no strikes, work stoppage, diminution or suspension of work of any kind whatsoever on the part of the Union or its membership; nor shall there be any lockout on the part of the Employer. No officer or representative of the Union shall authorize, instigate, aid or condone any strike, work stoppage, diminution or suspension of work of any kind whatsoever prohibited by the provisions of this paragraph. No employee shall participate in any such prohibited activities.

(\*The Union reserves the right to strike and/or picket any market of the Employer wherein the Employer continues, after receipt of a written grievance, to sell, outside of the market operating hours prescribed in Article 5, meat products under the Union's jurisdiction not specifically authorized for sale outside of such market operating hours.)

The Union further reserves the right to strike and/or picket the market or markets involved in the grievance in the event the Employer shall fail or refuse to comply with any decision of a Board of Arbitration issued pursuant to a proceeding under Section 3 of this Article within ten (10) days after notice thereof. The Employer reserves the right to declare a lockout should the Union fail or refuse to comply with any decision of a Board of Arbitration within ten (10) days after notice hereof.

**Section 2. Time Limit on Grievances.** Grievances of any nature must be made within forty-five (45) calendar days after the cause giving rise to the grievances becomes evident; and wage claims shall not be valid and collectible for a period earlier than ninety (90) days prior to the date of filing the grievance or the date the grievance arose, whichever date is most recent.

**Section 3. Grievances and Arbitration.** Should any dispute or grievance arise between the Employer and the Union or between the Employer and its employees, concerning the application and/or construction of this Contract, the parties agree that such matter shall be adjusted, if possible, by negotiations. In the event the dispute or grievance cannot be composed by negotiations within fifteen (15) days after the inception of the matter in dispute, then it shall be submitted immediately to a Board of Arbitration, consisting of three (3) persons, for final and binding decision. Either party may institute said arbitration proceedings by giving the other party notice thereof in writing, naming one person to act on his behalf on said Arbitration Board; and the other party shall, within five (5) days after receipt of such written notice, name one person to act on his behalf on said Arbitration Board. These two so selected shall designate the third member or referee of the Board. In the event these two so selected shall be unable within fifteen (15) days, to agree upon the third member or referee, then the third



...the Employer shall be discharged without good and sufficient cause; drunkenness, dishonesty, incompetency, incivility or an over supply of help will be sufficient cause for dismissal, or help can be dismissed providing preference be given to Union men in replacing help.

**Section 6. Display of Contract and Union Shop Cards.** This Agreement is to be kept posted in the place of employment so that every employee may have equal and easy access to same.

It will be the duty of the Employer to prominently display Union shop cards in all establishments wherein Union meat cutters are employed. These cards shall remain the property of the Union, and the Employer shall have their usage only until such time as the Union shall request their return. The Employer agrees to surrender same immediately upon demand by the Union.

**Section 7. Withdrawal Cards.** Any member of Local 546 who is in good standing and is in business for himself who may desire to affiliate with the \_\_\_\_\_ may apply for a withdrawal card, provided the request be

accompanied by the similar request from the \_\_\_\_\_. Withdrawal card may be obtained upon application to the Executive Board of Local 546.

## ARTICLE 8. GRIEVANCES AND ARBITRATION

**Section 1. No Strike; No Lockout.** The Union and the Employer agree on the need for the continuance of their service to the public without interruption. Both recognize this objective as necessary to the security of the Employer and its people. Both, therefore, specifically pledge themselves to help assure that security by using the procedures agreed upon between them for the adjustment of disputes and grievances in all cases where there is any difference of opinion concerning the rights of either under this contract or the interpretation or application of any provision of it. Therefore, subject to the exceptions stated herein, during the term of this agreement there shall be no strikes, work stoppage, diminution or suspension of work of any kind whatsoever on the part of the Union or its membership; nor shall there be any lockout on the part of the Employer. No officer or representative of the Union shall authorize, instigate, or condone any strike, work stoppage, diminution or suspension of work of any kind whatsoever prohibited by the provisions of this paragraph. No employee shall participate in any such prohibited activities.

\*The Union reserves the right to strike and/or picket any market of the Employer wherein the Employer continues, after receipt of a written grievance, to sell, outside of the market operating hours prescribed in Article 5, meat products under the Union's jurisdiction not specifically authorized for sale outside of such market operating hours.

The Union further reserves the right to strike and/or picket the market or markets involved in the grievance in the event the Employer shall fail or refuse to comply with any decision of a Board of Arbitration issued pursuant to a proceeding under Section 3 of this Article within ten (10) days after notice thereof. The Employer reserves the right to declare a lockout should the Union fail or refuse to comply with any decision of a Board of Arbitration within ten (10) days after notice hereof.

**Section 2. Time Limit on Grievances.** Grievances of any nature must be made within forty-five (45) calendar days after the cause giving rise to the grievances becomes evident; and wage claims shall not be valid and collectible for a period earlier than ninety (90) days prior to the date of filing the grievance or the date the grievance arose, whichever date is most recent.

**Section 3. Grievances and Arbitration.** Should any dispute or grievance arise between the Employer and the Union or between the Employer and its employees, concerning the application and/or construction of this Contract, the parties agree that such matter shall be adjusted, if possible, by negotiations. In the event the dispute or grievance cannot be composed by negotiations within fifteen (15) days after the inception of the matter in dispute, then it shall be submitted immediately to a Board of Arbitration, consisting of three (3) persons, for final and binding decision. Either party may institute said arbitration proceedings by giving the other party notice thereof in writing, naming one person to act on his behalf on said Arbitration Board; and the other party shall, within five (5) days after receipt of such written notice, name one person to act on his behalf on said Arbitration Board. These two so selected shall designate the third member or referee of the Board. In the event these two so selected shall be unable, within fifteen (15) days, to agree upon the third member or referee, then the third member of the Board shall forthwith be designated under the rules and procedures of the Federal Mediation and Conciliation Service. The Board shall hold hearings and render its decision in writing within thirty (30) days with respect to a dispute under Article 1, Section 3(d) and within ninety (90) days with respect to any other dispute. The Board's decision shall be final and binding upon both parties. The decision of any two members of the Board shall be the decision of the Board. If the parties shall agree upon one person to act as Arbitrator, his decision shall be as binding as that of a Board of Arbitration. The compensation and expense, if any, of witnesses and the cost of other evidence shall be borne by the party on whose behalf witnesses are called or the evidence is introduced. Each party shall pay for the compensation and expenses of the Arbitrator appointed by it. The compensation and expenses of the third Arbitrator and all other costs incurred in conducting the arbitration proceedings shall be borne equally by the parties hereto.

[fol. 10]  
546, et al, vs. Jewel is reversed.

## ARTICLE 9. TERM

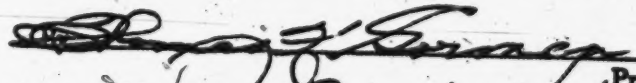
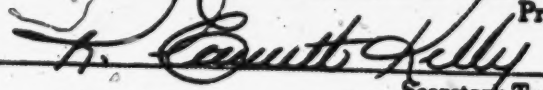
Section 1. *Initial Term.* This Agreement shall become effective at 12:01 a.m., October 4, 1959, and shall expire at 12:00 midnight, October 7, 1961.

Section 2. *Renewal Term.* If either party wishes to modify this Agreement at its expiration, it shall serve notice in writing of such request upon the other party not less than sixty (60) days prior to the expiration date. In the absence of the service of such notice, this Contract shall automatically renew itself for a period of one year and from year to year thereafter, it being further agreed that the Contract expiration date shall be the first Saturday in October of each year.

Section 3. *Retroactivity.* This Contract shall remain in full force and effect until a new agreement is negotiated, but not beyond an additional sixty (60) days beyond the Contract expiration date. Any increases in wages set out in Article 3 resulting from the negotiations following the Contract expiration date shall be retroactive to the date of expiration, but not exceeding ninety (90) calendar days, whichever period shall be shorter. There shall be no retroactivity with respect to other contract changes, such as changes in working hours or premium or overtime pay.

Executed at Chicago, Illinois, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

LOCAL 546, AMALGAMATED MEAT CUTTERS AND  
BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO

  
\_\_\_\_\_  
President  
By   
\_\_\_\_\_  
Secretary-Treasurer

Employer \_\_\_\_\_

By \_\_\_\_\_

Employer's Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*This provision is not agreed to by Jewel Tea Co., Inc.  
unless and until the decision of U.S. Court of Appeals  
for the 7th Circuit in the case of Local Unions Nos.



1959-61

7 Ex. 7

DOCKETED

## AMALGAMATED MEAT CUTTERS

130 NORTH WELLS STREET • FRANKLIN 2-0030 • CHICAGO 6

FILED



AFFILIATED WITH THE  
AFL-CIO  
ILLINOIS FEDERATION OF LABOR  
CHICAGO FEDERATION OF LABOR

MAY 28 1963

58C145

R. EMMETT KELLY  
SECRETARY-TREASURER

AT 0 O'CLOCK SELF SERVICE CONTRACT  
ELBERT A. WAGNER JR.  
AMALGAMATED MEAT CUTTERS AND B. W. OF N.A.,  
AFL-CIO

**Articles of Agreement** governing Self-Service Meat Markets in the City of Chicago and County of Cook, entered

into between

hereinafter called the Employer, and the AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 546 (AFL-CIO), hereinafter sometimes referred to as the Union, acting as the exclusive collective bargaining agent for all employees covered by this Agreement. This contract approved and passed by the International Executive Board at the General Office the 5th day of January, 1960.

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[fol. 12] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT

PLAINTIFF'S EXHIBIT

MAY 28 1963

R. EMMETT KELLY  
SECRETARY-TREASURER

AT 12 O'CLOCK SELF-SERVICE CONTRACT  
ELBERT A. WAGNER, JR.  
AMALGAMATED MEAT CUTTERS AND B. W. OF N.A.,  
AFL-CIO

**Articles of Agreement** governing Self-Service Meat Markets in the City of Chicago and County of Cook, entered

into between

hereinafter called the Employer, and the AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 546 (AFL-CIO), hereinafter sometimes referred to as the Union, acting as the exclusive collective bargaining agent for all employees covered by this Agreement. This contract approved and passed by the International Executive Board at the General Office the 5th day of January, 1960.

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**ARTICLE 1. GENERAL**

Section 1. *Scope of Contract.* It is agreed that this Contract shall govern the hours, wages and other conditions of employment of Employer's meat department employees in Self-Service Meat Markets only within the geographical jurisdiction of Local 546 and that the hours, wages and other conditions of employment of Employer's meat department employees in Service Meat Markets are covered by a separate contract. It is further agreed that the employer shall have the sole discretion

[fol. 12] IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

PLAINTIFF'S EXHIBIT 7



of determining from time to time which system of merchandising, service or self-service, shall be utilized in each of the Employer's markets; provided that the Employer shall comply with the wages, hours and other contractual conditions of employment pertaining to the system of merchandising used in that market.

## **Section 2. Definitions.**

(a) *Apprentice*: An apprentice is an employee who is in training to become a Journeyman butcher. Apprentices must be at least sixteen (16) years of age.

(b) *Journeyman*: After serving three (3) years of apprenticeship, an employee shall be classified as a Journeyman meat cutter and shall receive the Journeyman rate of pay.

(c) *Head Meat Cutter*: The term "Head Meat Cutter" means a Journeyman meat cutter who is responsible for the efficient management of the market.

(d) *Self-Service and Service*: A self-service market is one in which fresh beef, veal, lamb, mutton or pork are available for sale on a pre-package self-service basis. It is agreed that any market which is operated on a partially service and partially self-service basis shall be classified as a self-service market if any fresh beef, veal, lamb, mutton or pork are made available for sale on a pre-package self-service basis, even though there is also a service counter offering custom cutting for those who prefer it. Such semi-self-service market shall be considered a self-service market subject to the terms and conditions and wage scale contained in this Self-Service Contract.

If no fresh beef, veal, lamb, mutton or pork are sold on a self-service basis, then the market is a Service market and shall be operated in accordance with the Service Contract. It is further expressly understood and agreed that if all fresh beef, veal, lamb, mutton and pork sold by a market are handled and sold on a service basis only, the fact that a market handles and sells, on a self-service basis, delicatessen and other meat products now excepted from the jurisdiction of the Union under the Service Contract shall not operate to classify such market as a self-service market; but such semi-self-service market shall nevertheless be considered a service market subject only to the wage scales, hours and other conditions provided in the Service Contract.

In the event of any dispute as to whether a meat market shall be classed as a service market subject to the terms and conditions of the Service Contract or a self-service market subject to the terms and conditions of this Contract, the decision of the Union shall be binding unless and until said decision has been set aside by any arbitration proceedings had pursuant to the terms of this Contract; provided, however, that either party may require that such dispute be submitted to arbitration forthwith.

**Section 3. Notices.** All notices required under this Contract shall be deemed to be properly served if delivered in writing personally or sent by certified mail to the offices of the Union at 130 North Wells Street, Chicago 6, Illinois, or to the Employer at the address designated below, or to any subsequent address which the Union or the Employer may designate in writing for such purpose. Date of service of a notice served by mail shall be the date on which such notice is post-marked by a post-office of the United States Post Office Department.

**Section 4. Partial Invalidity.** Nothing contained in this agreement is intended to violate any Federal Law, Rule, or Regulation made pursuant thereto. If any part of this Agreement is construed by a court or board of competent jurisdiction to be in such violation, then that part shall be made null and void, the remainder of the Contract shall continue in full force and the parties will immediately begin negotiations to replace the void part with a valid provision.

**Section 5. Authority of Signing Parties.** The parties hereto certify that they are empowered and duly authorized to sign this Agreement.

**Section 6. Successors and Assigns.** This agreement shall be binding upon the Employer herein and its successors and assigns.

## **ARTICLE 2. JURISDICTION**

**Section 1. Recognition.** The Employer recognizes and agrees that said Union is and shall be the sole and exclusive collective bargaining agency for and on behalf of all employees in the meat department of said Employer who process, pack, wrap, handle and sell frozen and fresh meats on Employer's premises, and that it will not negotiate with any but the duly elected officers of the Union nor contract with anyone not affiliated with the Union.

**Section 2. Processing.** In Self-Service markets members of the Union shall perform all cutting, preparing, fabricating, handling and packaging into retail cuts of all fresh fish and rabbits and all fresh or frozen beef, veal, pork, lamb and mutton, said work to be done only on the premises or immediately adjacent thereto; provided, however, that frozen specialty meat items such as the items enumerated in Section 3—Item 6 below, frozen fresh poultry, cut-up or whole and vacuum or comparably tight-wrapped ham slices, shanks and butts may be prepared by the packer, supplier or employer off the premises.



(b) *Journeyman*: The Journeyman rate of pay.

(c) *Head Meat Cutter*: The term "Head Meat Cutter" means a Journeyman meat cutter who is responsible for the efficient management of the market.

(d) *Self-Service and Service*: A self-service market is one in which fresh beef, veal, lamb, mutton or pork are available for sale on a pre-package self-service basis. It is agreed that any market which is operated on a partially service and partially self-service basis shall be classified as a self-service market if any fresh beef, veal, lamb, mutton or pork are made available for sale on a pre-package self-service basis, even though there is also a service counter offering custom cutting for those who prefer it. Such semi-self-service market shall be considered a self-service market subject to the terms and conditions and wage scale contained in this Self-Service Contract.

If no fresh beef, veal, lamb, mutton or pork are sold on a self-service basis, then the market is a Service market and shall be operated in accordance with the Service Contract. It is further expressly understood and agreed that if all fresh beef, veal, lamb, mutton and pork sold by a market are handled and sold on a service basis only, the fact that a market handles and sells, on a self-service basis, delicatessen and other meat products now excepted from the jurisdiction of the Union under the Service Contract shall not operate to classify such market as a self-service market; but such semi-self-service market shall nevertheless be considered a service market subject only to the wage scales, hours and other conditions provided in the Service Contract.

In the event of any dispute as to whether a meat market shall be classed as a service market subject to the terms and conditions of the Service Contract or a self-service market subject to the terms and conditions of this Contract, the decision of the Union shall be binding unless and until said decision has been set aside by any arbitration proceedings had pursuant to the terms of this Contract; provided, however, that either party may require that such dispute be submitted to arbitration forthwith.

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Section 2. *Processing*. In Self-Service markets members of the Union shall perform all cutting, preparing, fabricating, handling and packaging into retail cuts of all fresh fish and rabbits and all fresh or frozen beef, veal, pork, lamb and mutton, said work to be done only on the premises or immediately adjacent thereto; provided, however, that frozen specialty meat items such as the items enumerated in Section 3—Item 6 below, frozen fresh poultry, cut-up or whole and vacuum or comparably tight-wrapped ham slices, shanks and butts may be prepared by the packer, supplier or employer off the premises.

Section 3. *Sale*. In self-service markets members of the Union shall have the exclusive jurisdiction over the sale of all fish, poultry, rabbits and meat, whether frozen fresh or fresh, and delicatessen meats, except sliced packaged bacon, sliced packaged Canadian bacon, canned and glassed meats of all kinds and all meats not for human consumption. The following meats subject to the Union's jurisdiction over sale may nevertheless be sold from self-service cases after the market hours set out in Article 5 provided that Union members stock the cases before 6:00 p.m.:

- (1) All delicatessen meats including:
  - (a) Ready to eat prepared meats, poultry and fish;
  - (b) Sliced boiled, baked or barbecued ham;
  - (c) Sliced packaged dried beef;
  - (d) Smoked sausage;
  - (e) Fresh pork sausage.
- (2) Frozen fresh poultry, cut-up or whole;

- (3) Fresh poultry, cut-up or whole, processed on the premises;
  - (4) Frozen packaged fish;
  - (5) Smoked butts, smoked ribs and smoked hocks;
  - (6) Frozen specialty meat items such as frozen and formed (flaked or chopped) patties and choppettes, with or without butter or vegetable, breaded or unbreaded;
- provided further that frozen fresh poultry, fresh poultry (cut up or whole) processed on the premises, fresh pork sausage and the frozen meat specialty items described above are priced or prepriced by meat department employees on the premises.

### ARTICLE 3. WAGES

Section 1. *Wage Rates—Weekly, Extra Day and Overtime.* Not less than the following wages shall be paid during the term of this Contract:

(a) FIRST CONTRACT YEAR 10/4/59 THRU 10/1/60	Minimum Weekly Wage for Basic Workweek—40 Hours	Extra Day Rates		Hourly Rates*	
		Full Day	Half Day	Str. Time	Overtime
Head Meat Cutter .....	\$125.00	\$27.00	\$13.50	\$3.125	\$4.6875
Journeyman .....	118.50	25.70	12.85	2.9625	4.44375
Apprentices:					
0 to 6 Months .....	75.00	17.00	8.50	1.875	2.8125
6 to 12 " .....	79.00	17.80	8.90	1.975	2.9625
12 to 18 " .....	84.00	18.80	9.40	2.10	3.15
18 to 24 " .....	88.00	19.60	9.80	2.20	3.30
24 to 36 " .....	93.00	20.60	10.30	2.325	3.4875

Extra Journeyman—\$118.50 for a basic workweek; \$25.70 per full day; \$12.85 per half day.

(b) SECOND CONTRACT YEAR 10/2/60 THRU 10/7/61				Hourly Rates*	
				Str. Time	Overtime
Head Meat Cutter .....	\$130.50	\$28.10	\$14.05	\$3.2625	\$4.89375
Journeyman .....	124.00	26.80	13.40	3.10	4.65
Apprentices:					
0 to 6 Months .....	75.00	17.00	8.50	1.875	2.8125
6 to 12 " .....	81.00	18.20	9.10	2.025	3.0375
12 to 18 " .....	87.00	19.40	9.70	2.175	3.2625
18 to 24 " .....	91.00	20.20	10.10	2.275	3.4125
24 to 36 " .....	96.00	21.20	10.60	2.40	3.60

Extra Journeyman—\$124.00 for a basic workweek; \$26.80 per full day; \$13.40 per half day.

\* Hourly rates may be rounded off to nearest quarter-cent, half-cent, or whole cent, depending on the Employer's payroll practice.

Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages or working conditions.

Section 2. *Payment of Extra Day Rates.* The extra day and half day rates shall be paid whenever an employee works the sixth (6th) day of a regular workweek or the fifth (5th) day of a holiday week. These rates provide a \$2.00 premium over the average daily rate for a full day and a \$1.00 premium over the average for a half day.

In the event state or federal legislation is enacted during the term of this contract which requires the payment of time on the date such law shall become effective such legislative requirement shall replace the above provision requiring the payment of extra day rates and said extra day rate provision shall cease to have any further effect.

Section 3. *Extra Help.* Extra help shall be paid at the Journeyman extra day rates set out above, except in the event that they work the full week when they are to receive the minimum weekly wage set out above for their classification.

OTHER TERMS AND OTHER CONDITIONS OF EMPLOYMENT

This provision is not agreed to by Jewel Tea Co., Inc. unless and until the decision of U.S. Court of Appeals for

## ARTICLE 3. WAGES

Section 1. *Wage Rates—Weekly, Extra Day and Overtime.* Not less than the following wages shall be paid during the term of this Contract:

(a) FIRST CONTRACT YEAR 10/4/59 THRU 10/1/60	Minimum Weekly Wage for Basic Workweek—40 Hours	Extra Day Rates		Hourly Rates*	
		Full Day	Half Day	Str. Time	Overtime
Head Meat Cutter .....	\$125.00	\$27.00	\$13.50	\$3.125	\$4.6875
Journeyman .....	118.50	25.70	12.85	2.9625	4.44375
Apprentices:					
0 to 6 Months .....	75.00	17.00	8.50	1.875	2.8125
6 to 12 " .....	79.00	17.80	8.90	1.975	2.9625
12 to 18 " .....	84.00	18.80	9.40	2.10	3.15
18 to 24 " .....	88.00	19.60	9.80	2.20	3.30
24 to 36 " .....	93.00	20.60	10.30	2.325	3.4875

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6 to 12 " .....	81.00	18.20	9.10	2.025	3.0375
12 to 18 " .....	87.00	19.40	9.70	2.175	3.2625
18 to 24 " .....	91.00	20.20	10.10	2.275	3.4125
24 to 36 " .....	96.00	21.20	10.60	2.40	3.60

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\*Hourly rates may be rounded off to nearest quarter-cent, half-cent, or whole cent, depending on the Employer's payroll practice.

Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages or working conditions.

Section 2. *Payment of Extra Day Rates.* The extra day and half day rates shall be paid whenever an employee works the sixth (6th) day of a regular workweek or the fifth (5th) day of a holiday week. These rates provide a \$2.00 premium over the average daily rate for a full day and a \$1.00 premium over the average for a half day.

In the event state or federal legislation is enacted during the term of this contract which requires the payment of time on the date such law shall become effective such legislative requirement shall replace the above provision requiring the payment of extra day rates and said extra day rate provision shall cease to have any further effect.

Section 3. *Extra Help.* Extra help shall be paid at the Journeyman extra day rates set out above, except in the event that they work the full week when they are to receive the minimum weekly wage set out above for their classification.

## ARTICLE 4. WORKING HOURS AND OTHER CONDITIONS OF EMPLOYMENT

Section 1. *Basic Workday.* Eight (8) hours shall constitute the basic workday which shall be scheduled to begin no earlier than 8:00 a.m. and to end no later than 6:00 p.m. One hour shall be allowed for lunch in all markets whether manned by one or more employees, said lunch hour to begin no earlier than 11:00 a.m. and to end no later than 2:00 p.m. There shall be no clean-up time after 6:00 p.m., except clean-up may be performed after 6:00 p.m. provided that overtime is paid for all work performed after 6:00 p.m.

Section 2. *Basic Workweek.* Five (5) basic workdays (40 hours) shall constitute the basic workweek which shall be worked—Monday through Saturday, inclusive. One full day off within the week of Monday through Saturday, inclusive, shall be allowed each employee in each shop. The day off shall be at the Employer's discretion except that it may be rotated or changed in accordance with the mutual agreement of the Employer and his employees.

Section 3. *Sixth Day Guarantee.* Any employee called to work on the sixth (6th) day in any regular workweek shall be guaranteed four (4) hours (½ day) of work. Reporting time on the 6th day shall be no earlier than 8:00 a.m. for a full day or

This provision is not agreed to by Jewel Tea Co., Inc. unless and until the decision of U.S. Court of Appeals for



morning half day, and no earlier than 1:00 p.m. for an afternoon half day. It is agreed that the Head Meat Cutters and Journeymen shall be given preference over apprentices for work on the sixth (6th) full or half day during a regular work-week and on the fifth (5th) full or half day during a holiday week.

Section 4. *Overtime.* At the Employer's discretion overtime at overtime rates may be worked after eight (8) hours in any one day and behind locked doors after 6:00 p.m.

Section 5. *Inventory.* Employees shall not take inventory outside of regular working hours.

Section 6. *Restrictions on Apprentices.* Apprentices may be employed at a ratio of not exceeding two (2) for each five (5) Journeymen employed by the Employer within the jurisdiction of the Local. A quarterly report covering the number of Apprentices employed in relationship to the number of Journeymen shall be furnished the Union. The Employer agrees to rotate all Apprentices in his markets so as to give them sufficient, well-rounded experience to qualify them as Journeymen at the end of the three (3) year apprenticeship period. Apprentices shall not work part time or as extra men on Saturdays or the day preceding holidays.

Section 7. *Laundry, Tools and Equipment.* Laundry, tools and sharpening of tools shall be furnished free of cost by Employer. The kinds of saws, power saws, conveyors, sealing irons, sealing plates, staplers, recording and printing sealers for weighing, vacuum sealing equipment, packaging equipment and other tools which the Employer may use shall be determined by the Employer.

Section 8. *Rest Period.* Each employee shall have two (2) rest periods of ten (10) minutes each to be taken daily at the following times: Cutting Room Employees, 10:00 a.m. to 10:10 a.m. and 3:00 p.m. to 3:10 p.m.; Packaging Room Employees including Employees Servicing the Self-Service Counters, 10:10 a.m. to 10:20 a.m. and 3:10 p.m. to 3:20 p.m.

## ARTICLE 5. MARKET OPERATING HOURS

Market operating hours shall be 9:00 a.m. to 6:00 p.m. Monday through Saturday, inclusive. No customer shall be served who comes into the market before or after the hours set forth above. In those stores in which the grocery departments remain open after 6:00 p.m. only the following products may be sold after 6:00 p.m.:

- (1) Sliced packaged bacon and Canadian bacon, canned and glassed meats of all kinds, and all meats not for human consumption (being those products excepted from the Union's jurisdiction over sale);
- (2) All delicatessen meats including:
  - (a) Ready to eat prepared meats, poultry and fish;
  - (b) Sliced boiled, baked or barbecued ham;
  - (c) Sliced packaged dried beef;
  - (d) Smoked sausage;
  - (e) Fresh pork sausage.
- (3) Frozen fresh poultry, cut-up or whole;
- (4) Fresh poultry, cut-up or whole, processed on the premises;
- (5) Frozen packaged fish;
- (6) Smoked butts, smoked ribs and smoked hocks;
- (7) Frozen specialty meat items such as frozen and formed (flaked or chopped) patties and choppettes, with or without butter or vegetable, breaded or unbreaded.

The parties agree that in the event the market operating hours of service markets are extended at any time during the term hereof the extension shall likewise apply to the market operating hours of self-service markets.

## ARTICLE 6. HOLIDAYS, VACATIONS AND OTHER COMPENSABLE ABSENCES

Section 1. *Holidays.* There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day. When and if Victory Day is declared a National Legal Holiday, it shall be made a part of this Article.

Employees who are absent the regularly scheduled workday before, or after, a holiday, or both, except in the case of proven illness or unavoidable absence shall not receive holiday pay; but shall be paid only for the hours actually worked.

the 7th Circuit in the case of Local Unions  
Nos. 546 et al. vs. Jewel is reversed.

[fol. 15]

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Employees who are absent the regularly scheduled workday before, or after, a holiday, or both, except in the case of proven illness or unavoidable absence shall not receive holiday pay, but shall be paid only for the hours actually worked.

During a holiday week the employee shall receive a full week's pay for four (4) days of work; if an employee works the fifth (5th) day during a holiday week, he shall be paid the extra day or half day rates set out in Article 3.

**Section 2. Vacations.** Any employee who has given service for the course of one year shall be entitled to one week's vacation with pay. After two (2) years of service he shall be entitled to two (2) weeks' vacation with pay. All employees having ten years of continuous full-time service shall be entitled to three (3) weeks of vacation with pay. Unless otherwise mutually agreed upon between Employer and employee, vacation weeks shall be taken consecutively. A man relieving a Head Meat Cutter on vacation shall receive the Contract rate of pay for Head Meat Cutters.

Whenever a holiday listed in Section 1 of this Article falls within an employee's vacation period, the employee shall receive an extra day's pay or a subsequent day off, at the Employer's option.

**Section 3. Absences Due to Injuries.** Any regular employee unable to work because of injuries received during the regularly scheduled workweek and whose injuries arose out of or during the course of his employment shall be entitled to a full day's pay for each day lost because of such injuries, but not in excess of four (4) days pay, including pay for the day of the injury, in the first seven (7) calendar days following the accident; provided, however, that the employee shall report upon receipt of the injury to the Employer's physician whose decision with respect to the length of time required off shall

the 7th Circuit in the case of Local Unions  
Nos. 546, et al., vs. Jewel is reversed.

[fol. 15]



be controlling; provided further, that nothing in this provision shall affect any rights accrued to either party under the State Workmen's Compensation Act, and that the Employer shall receive credit for any payment made under this provision should compensation be awarded by the Industrial Commission of Illinois.

**Section 4. Funeral Leave.** The Employer agrees to pay full-time employees for necessary absence on account of death in the immediate family up to and including a maximum of three (3) scheduled work days at straight time, provided the employee attends the funeral. The term "immediate family" shall mean spouse, parent, child, brother, sister, father-in-law, mother-in-law, or any relative residing with the employee or with whom the employee is residing.

**Section 5. Jury Pay.** When any full-time employee who is covered by this agreement is summoned for jury service, he shall be excused from work for the day on which he reports for jury service and/or serves. He shall receive for each such day on which he so reports and/or serves and on which he otherwise would have worked the difference between eight (8) times his regular hourly rate of pay and the payment he receives for jury service, if any; provided, however, that no payment shall be made under the provisions of this Article to any employee summoned for jury service unless he shall have advised the Employer of the receipt by him of such jury summons not later than the next regularly scheduled workday after receipt of said summons. Before any payment shall be made to any employee hereunder, he shall present to the Employer proof of his summons for service, and of the time served and the amount of pay received therefor, if he shall have served as juror. The provisions of this Article shall apply only when an employee is summoned for jury duty and shall not apply if an employee volunteers to serve as a juror. When an employee is released for a day or part of day during any period of jury service, he shall report to his store for work.

## ARTICLE 7. UNION-MANAGEMENT RELATIONS

**Section 1. Union Employees.** The Union, if requested, will furnish men, insofar as they are available, who will work to the best interest of the Employer in every way, just and lawful, who will give honest and diligent service to patrons of the Employer's establishment, and who will do everything within their power for the uplifting of the meat industry.

**Section 2. Union Shop.** It shall be a condition of employment that all employees of the Employer covered by this agreement who are members of the Union in good standing on the date on which this agreement is signed shall remain members in good standing and those who are not members on the date on which this agreement is signed shall, on the thirtieth day following the date on which this agreement is signed, become and remain members in good standing in the Union. It shall also be a condition of employment that all employees covered by this agreement and hired on or after the date on which this agreement is signed, shall, on the thirtieth day following the beginning of such employment become and remain members in good standing in the Union.

**Section 3. Union Preference.** When permitted by law, the Employer agrees that when in need of help he will give preference to members in good standing in the Union.

**Section 4. Business Representatives.** Union Business Representatives shall be admitted to the Employer's market premises during the hours meat department employees are working for the purpose of ascertaining whether or not this Agreement is being observed and for collecting dues. Such activities shall be conducted in such a manner as not to interfere with the orderly operation of Employer's business. Business Representatives have full authority and approval from both parties to this Agreement to immediately remove and require the discharge of any employee working below the wage scale fixed herein.

**Section 5. Discharge.** No employee shall be discharged without good and sufficient cause. Drunkenness, dishonesty, incompetency, incivility or an oversupply of help will be sufficient cause for dismissal. Help can be dismissed providing preference be given to Union men in replacing help.

**Section 6. Display of Contract and Union Shop Cards.** This Agreement is to be kept posted in the place of employment so that every employee may have equal and easy access to same.

It will be the duty of the Employer to prominently display Union shop cards in all establishments wherein Union meat cutters are employed. These cards shall remain the property of the Union, and the Employer shall have their usage only until such time as the Union shall request their return. The Employer agrees to surrender same immediately upon demand by the Union.

**Section 7. Concessions to Other Employers.** The Union agrees that during the term of this Agreement it will not enter into a contract with any other employer which grants to such other employer the right to operate self-service markets for lesser wages or longer hours or any other condition of employment or market operation more favorable to such other employer than those contained in this Contract except upon the condition that this Employer shall receive the benefit of any more

\*This provision is not agreed to by Jewel Tea Co., Inc. unless and until the decision of U.S. Court of Appeals for the



Section 5. *Jury pay.* when any full-time employee who is covered by this agreement is summoned for jury service and/or serves. He shall receive for each such day on which he so reports and/or serves and on which he otherwise would have worked the difference between eight (8) times his regular hourly rate of pay and the payment he receives for jury service, if any; provided, however, that no payment shall be made under the provisions of this Article to any employee summoned for jury service unless he shall have advised the Employer of the receipt by him of such jury summons not later than the next regularly scheduled workday after receipt of said summons. Before any payment shall be made to any employee hereunder, he shall present to the Employer proof of his summons for service, and of the time served and the amount of pay received therefor, if he shall have served as juror. The provisions of this Article shall apply only when an employee is summoned for jury duty and shall not apply if an employee volunteers to serve as a juror. When an employee is released for a day or part of day during any period of jury service, he shall report to his store for work.

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## ARTICLE 8. GRIEVANCES AND ARBITRATION

Section 1. *No Strike; No Lockout.* The Union and the Employer agree on the need for the continuance of their service to the public without interruption. Both recognize this objective as necessary to the security of the Employer and its people. Both, therefore, specifically pledge themselves to help assure that security by using the procedures agreed upon between them for the adjustment of disputes and grievances in all cases where there is any difference of opinion concerning the rights of either under this contract or the interpretation or application of any provision of it. Therefore, subject to the exceptions stated herein, during the term of this agreement there shall be no strikes, work stoppage, diminution or suspension of work of any kind whatsoever on the part of the Union or its membership, nor shall there be any lockout on the part of the Employer. No officer or representative of the Union shall authorize, instigate, aid or condone any strike, work stoppage, diminution or suspension of work of any kind whatsoever prohibited by the provisions of this paragraph. No employee shall participate in any such prohibited activities.

\*This provision is not  
Jewel Tea Co., Inc.  
decision of U.S. Court

[fol. 16]

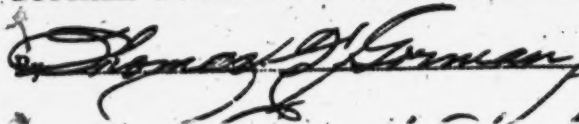
- \* The Union reserves the right to strike and/or picket any market of the Employer wherein the Employer continues, after receipt of a written grievance, to sell, outside of the market operating hours prescribed in Article 5, meat products under the Union's jurisdiction not specifically authorized for sale outside of such market operating hours.
- The Union further reserves the right to strike and/or picket the market or markets involved in the grievance in the event the Employer shall fail or refuse to comply with any decision of a Board of Arbitration issued pursuant to a proceeding under Section 3 of this Article within ten (10) days after notice thereof. The Employer reserves the right to declare a lockout should the Union fail or refuse to comply with any decision of a Board of Arbitration within ten (10) days after notice thereof.
- Section 2. Time Limit on Grievances.** Grievances of any nature must be made within forty-five (45) calendar days after the cause giving rise to the grievance becomes evident; and wage claims shall not be valid and collectible for a period earlier than ninety (90) days prior to the date of filing the grievance or the date the grievance arose, whichever date is most recent.
- Section 3. Grievances and Arbitration.** Should any dispute or grievance arise between the Employer and the Union or between the Employer and its employees, concerning the application and/or construction of this Contract, the parties agree that such matter shall be adjusted, if possible, by negotiations. In the event the dispute or grievance cannot be composed by negotiations within fifteen (15) days after the inception of the matter in dispute, then it shall be submitted immediately to a Board of Arbitration, consisting of three (3) persons, for final and binding decision. Either party may institute said arbitration proceedings by giving the other party notice thereof in writing, naming one person to act on his behalf on said Arbitration Board; and the other party shall, within five (5) days after receipt of such written notice, name one person to act on his behalf on said Arbitration Board. These two so selected shall designate the third member or referee of the Board. In the event these two so selected shall be unable, within fifteen (15) days, to agree upon the third member or referee, then the third member of the Board shall forthwith be designated under the rules and procedures of the Federal Mediation and Conciliation Service. The Board shall hold hearings and render its decision in writing within thirty (30) days with respect to a dispute under Article 1, Section 2(d) and within ninety (90) days with respect to any other dispute. The Board's decision shall be final and binding upon both parties. The decision of any two members of the Board shall be the decision of the Board. If the parties shall agree upon one person to act as Arbitrator, his decision shall be as binding as that of a Board of Arbitration. The compensation and expense, if any, of witnesses and the cost of other evidence shall be borne by the party on whose behalf witnesses are called or the evidence is introduced. Each party shall pay for the compensation and expenses of the Arbitrator appointed by it. The compensation and expenses of the third Arbitrator and all other costs incurred in conducting the arbitration proceedings shall be borne equally by the parties hereto.

## ARTICLE 9. TERM

- Section 1. Initial Term.** This Agreement shall become effective at 12:01 a.m., October 4, 1959, and shall expire at 12:00 midnight, October 7, 1961.
- Section 2. Renewal Term.** If either party wishes to modify this Agreement at its expiration, it shall serve notice in writing of such request upon the other party not less than sixty (60) days prior to the expiration date. In the absence of the service of such notice, this Contract shall automatically renew itself for a period of one year and from year to year thereafter, it being further agreed that the Contract expiration date shall be the first Saturday in October of each year.
- Section 3. Retroactivity.** This Contract shall remain in full force and effect until a new agreement is negotiated, but not beyond an additional sixty (60) days beyond the Contract expiration date. Any increases in wages set out in Article 3 resulting from the negotiations following the Contract expiration date shall be retroactive to the date of expiration, but not exceeding ninety (90) calendar days, whichever period shall be shorter. There shall be no retroactivity with respect to other contract changes, such as changes in working hours or premium or overtime pay.

Executed at Chicago, Illinois, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

LOCAL 546, AMALGAMATED MEAT CUTTERS AND  
BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO

  
President

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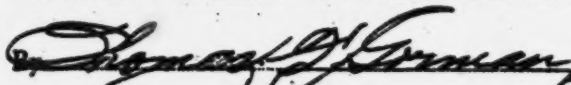
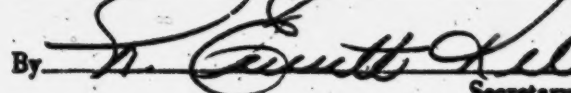
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Executed at Chicago, Illinois, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

LOCAL 546, AMALGAMATED MEAT CUTTERS AND  
BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO

  
President  
By   
Secretary-Treasurer

Employer \_\_\_\_\_

By \_\_\_\_\_

Employer's Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



*Pl ex 8*

*Service  
Contract  
1961-1964*



**LOCAL 546**

**Amalgamated Meat Cutters  
and Butcher Workmen  
of North America**

**AFL—CIO**

**R. EMMETT KELLY**

**Secretary-Treasurer**

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**1961-64**

**SERVICE CONTRACT**

**AMALGAMATED MEAT CUTTERS  
AND BUTCHER WORKMEN  
OF NORTH AMERICA—AFL-CIO**

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**October 8, 1961, through October 3, 1964**

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**Articles of Agreement** governing  
Service Meat Markets in the City of Chicago  
and County of Cook, entered into between

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hereinafter called the "Employer," all meat  
markets and chain store meat markets, all  
combination Grocery and Meat Markets in  
Chicago and County of Cook; and the  
**AMALGAMATED MEAT CUTTERS  
AND BUTCHER WORKMEN OF  
NORTH AMERICA, LOCAL 546 (AFL-  
CIO)** acting as the Collective Bargaining  
Agent for its members.

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## ARTICLE I

### GENERAL

**SECTION 1.1—Scope of Contract.** It is agreed that this Contract shall govern the hours, wages and other conditions of employment of Employer's meat department employees, in Service Meat Markets only within the geographical jurisdiction of Local 546, and that the hours, wages and other conditions of employment of Employer's meat department employees in Self-Service Markets are covered by a separate Contract. It is further agreed that the Employer shall have the sole discretion of determining from time to time which system of merchandising, service or self-service, shall be utilized in each of the Employer's markets; provided that the Employer shall comply with the wages, hours and other contractual conditions of employment pertaining to the system of merchandising used in that market.

### **SECTION 1.2—Definitions:**

(a) **Apprentice:** An apprentice is an employee who is in training to become a Journeyman Meat Cutter. Apprentices must be at least sixteen (16) years of age.

Apprentices may be employed at a ratio of not exceeding three (3) for each seven (7) Journeymen employed by the Employer within the jurisdiction of the Local. A quarterly report covering the number of Appren-

# **SERVICE CONTRACT**

tices employed in relationship to the number of Journeymen shall be furnished the Union. The Employer agrees to rotate all Apprentices in his markets so as to give them sufficient, well-rounded experience to qualify them as Journeymen at the end of the three (3) year apprenticeship period. Apprentices shall not work part time or as extra men on Saturdays or the day preceding holidays.

(b) *Journeyman*: After serving three years of apprenticeship (two and one-half (2½) years if the apprentice furnishes the Employer with a Certificate issued by the Washburne Trade School that he has satisfactorily completed the full meat training course of said school), an employee shall be classified as a Journeyman Meat Cutter and shall be paid the Journeyman rate of pay.

(c) *Head Meat Cutter*: The term "Head Meat Cutter" means a Journeyman meat cutter who is responsible for the efficient management of the market.

(d) *Self-Service and Service*: A self-service market is one in which fresh beef, veal, lamb, mutton or pork are available for sale on a pre-package self-service basis. It is agreed that any market which is operated on a partially service and partially self-service basis shall be classified as a self-service market if any fresh beef, veal, lamb, mutton or pork are made available for sale on a pre-package self-service basis, even though there is also a service counter offering custom cutting for

those who prefer it. Such semi-self-service market shall be considered a self-service market subject to the terms and conditions and wage scale contained in the Self-Service Contract.

If no fresh beef, veal, lamb, mutton or pork are sold on a self-service basis, then the market is a Service market and shall be operated in accordance with this Service Contract. It is further expressly understood and agreed that if all fresh beef, veal, lamb, mutton and pork sold by a market are handled and sold on a service basis only, the fact that a market handles and sells, on a self-service basis, delicatessen and other meat products now excepted from the jurisdiction of the Union under this Service Contract shall not operate to classify such market as a self-service market; but such semi-self-service market shall nevertheless be considered a service market subject only to the wage scales, hours and other conditions provided in this Service Contract.

In the event of any dispute as to whether a meat market shall be classed as a service market subject to the terms and conditions of this Contract or a self-service market subject to the terms and conditions of the Self-Service Contract, the decision of the Union shall be binding unless and until said decision has been set aside by any arbitration proceedings had pursuant to the terms of this Contract; provided, however, that either party may require that such dispute be submitted to arbitration forthwith.



**SECTION 1.3—Notices.** All notices required under this Contract shall be deemed to be properly served if delivered in writing personally or sent by certified or registered mail to the offices of the Union at 130 North Wells Street, Chicago 6, Illinois, or to the Employer at the address designated below, or to an employee at his home or residence address, or to any subsequent address which the Union, the employee, or the Employer may designate in writing for such purpose. Date of service of a notice served by mail shall be the date on which such notice is postmarked by a post office of the United States Post Office Department.

**SECTION 1.4—Partial Invalidity.** Nothing contained in this agreement is intended to violate any Law, Rule, or Regulation made pursuant thereto. If any part of this Agreement is construed by a court or board of competent jurisdiction to be in such violation, then that part shall be made null and void, the remainder of the Contract shall continue in full force and the parties will immediately begin negotiations to replace the void part with a valid provision.

**SECTION 1.5—Authority of Signing Parties.** The parties hereto certify that they are empowered and duly authorized to sign this Agreement.

**SECTION 1.6—Successors and Assigns.** This agreement shall be binding upon the Employer herein and its successors and assigns.

**SECTION 1.7—*Effective Date.*** Unless the context of a provision indicates otherwise, all provisions of the contract become effective upon the date of execution of the contract.

## **ARTICLE II**

### **RECOGNITION AND JURISDICTION**

**SECTION 2.1.—*Recognition.*** The Employer recognizes and agrees that said Union is and shall be the sole and exclusive collective bargaining agency for and on behalf of all meat cutters and butcher workmen employed by said Employer on their premises; including those workers processing, packing, wrapping, and selling frozen fresh meats.

**SECTION 2.2.—*Processing and Sale.*** The parties agree that all fish, poultry, rabbits, meats and its kindred products, fresh or frozen, except:

- (a) sliced boiled, baked or barbecued ham;
- (b) sliced packaged bacon;
- (c) sliced packaged dried beef;
- (d) sliced packaged Canadian bacon;
- (e) smoked sausage, smoked butts, smoked ribs and smoked hocks;
- (f) canned and glassed meats of all kinds;
- (g) all ready-to-eat prepared meats, poultry, and fish;
- (h) frozen packaged fish;
- (i) frozen specialty meat items such as frozen or formed (flaked or chopped)

patties and choppettes with or without butter or vegetable, breaded or unbreaded;

(j) All meats NOT for human consumption;

will be sold, cut, prepared and fabricated by meat department employees, and said cutting, preparing, fabricating and packaging of above products into retail cuts will be done on the premises or immediately adjacent thereto.

Frozen fresh poultry, cut-up or whole, fresh pork sausage, the frozen specialty meat items described above and vacuum or comparably tight wrapped ham slices, shanks and butts may be prepared by the packer, supplier or employer off the premises. Frozen fresh poultry, fresh poultry (cut-up or whole) processed on the premises, fresh pork sausage and frozen meat specialty items described above, may be sold from self-service cases outside the market hours prescribed in Article V; provided, however, that such products are priced or pre-priced by meat department employees on the premises.

### ARTICLE III

#### WAGES

**SECTION 3.1—*Wage Rates—Weekly, Extra Day and Overtime.*** Not less than the following wages shall be paid during the term of this Contract:

# **(a) FIRST AND SECOND CONTRACT YEARS, 10-8-61 THROUGH 10-5-63**

	Minimum Weekly Wage for Basic Workweek	Extra Day Rates		Hourly Rates*	
		Full Day	Half Day	Straight Time	Overtime
Head Meat Cutter .....	\$135.50	\$29.10	\$14.55	\$3.3875	\$5.08125
Journeyman .....	129.00	27.80	13.90	3.225	4.8375
Apprentices:					
0 to 6 Months .....	75.00	17.00	8.50	1.875	2.8125
6 to 12 " .....	82.00	18.40	9.20	2.05	3.075
12 to 18 " .....	89.00	19.80	9.90	2.225	3.3375
18 to 24 " .....	94.00	20.80	10.40	2.35	3.525
24 to 36 " .....	100.00	22.00	11.00	2.50	3.750

Extra Journeyman—\$129.00 for a basic workweek; \$27.80 per full day; \$13.90 per half day.

\*Hourly rates may be rounded off to the nearest quarter-cent, half-cent or whole cent, depending on the Employer's payroll practice.

**Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages or working conditions.**

# **(b) THIRD CONTRACT YEAR, 10-6-63 THROUGH 10-3-64**

	Minimum Weekly Wage for Basic Workweek	Extra Day Rates		Hourly Rates*	
		Full Day	Half Day	Straight Time	Overtime
Head Meat Cutter .....	\$140.50	\$30.10	\$15.05	\$3.5125	\$5.26875
Journeyman .....	134.00	28.80	14.40	3.35	5.025
Apprentices:					
0 to 6 Months .....	75.00	17.00	8.50	1.875	2.8125
6 to 12 " .....	83.00	18.60	9.30	2.075	3.1125
12 to 18 " .....	91.00	20.20	10.10	2.275	3.4125
18 to 24 " .....	97.00	21.40	10.70	2.425	3.6375
24 to 36 " .....	104.00	22.80	11.40	2.60	3.90

Extra Journeyman—\$134.00 for a basic workweek; \$28.80 per full day; \$14.40 per half day.

\*Hourly rates may be rounded off to the nearest quarter-cent, half-cent or whole cent, depending on the Employer's payroll practice.

Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages or working conditions.

**SECTION 3.2—*Payment of Extra Day Rates.***

The extra day and a half day rates shall be paid whenever an employee works the sixth (6th) day of a regular workweek or the fifth (5th) day of a holiday week. These rates provide a \$2.00 premium over the average daily rate for a full day and a \$1.00 premium over the average for a half day.

If the Employer becomes subject to state or federal legislation which requires the payment of time and one-half regular hourly rates of pay for all work performed in excess of forty-four (44), forty-two (42), or forty (40) hours in a workweek, then effective on the date such law shall become effective such legislative requirement shall replace the above provision requiring the payment of extra day rates and said extra day rate provision shall cease to have any further effect.

**SECTION 3.3—*Extra Help.*** Extra help shall be paid at the Journeyman extra day rates set out above, except in the event that they work the full week when they are to receive the minimum weekly wage set out above for their classification.

**ARTICLE IV**

**WORKING HOURS AND OTHER CONDITIONS  
OF EMPLOYMENT**

**SECTION 4.1—*Basic Workday.*** Eight (8) hours shall constitute the basic workday which shall be scheduled to begin no earlier than 8:00 a.m. and to end no later than 6:00



p.m. One hour shall be allowed for lunch in all markets whether manned by one or more employees, said lunch hour to begin no earlier than 11:00 a.m. and to end no later than 2:00 p.m. Employees must be dressed and ready for work at the scheduled starting times.

**SECTION 4.2—Basic Workweek.** Five (5) basic workdays (40 hours) shall constitute the basic workweek which shall be worked—Monday through Saturday, inclusive. One full day off within the week of Monday through Saturday, inclusive, shall be allowed each employee in each shop. The day off shall be at the Employer's discretion except that it may be rotated or changed in accordance with the mutual agreement of the Employer and his employees.

**SECTION 4.3—Sixth Day Guarantee.** Any employee called to work on the sixth (6th) day in any regular workweek shall be guaranteed four (4) hours ( $\frac{1}{2}$  day) of work. Reporting time on the 6th day shall be no earlier than 8:00 a.m. for a full day or morning half day, and no earlier than 1:00 p.m. for an afternoon half day. It is agreed that the Head Meat Cutters and Journeymen shall be given preference over apprentices for work on the sixth (6th) full or half day during a regular workweek and on the fifth (5th) full or half day during a holiday week.

**SECTION 4.4—Overtime.** At the Employer's discretion overtime at overtime rates may be

worked after eight (8) hours in any one day and behind locked doors after 6:00 p.m.

**SECTION 4.5—*Inventory.*** Employees shall not take inventory outside of regular working hours.

**SECTION 4.6—*Laundry, Tools and Equipment.*** Laundry, tools and sharpening of tools shall be furnished free of cost by Employer.

**SECTION 4.7—*Clean-up Time.*** It is expressly understood that no customer shall be served who comes into the market before or after the hours set forth in Article V, that all customers in the market at the closing hour shall be served, that all meats will be properly taken care of and the market placed in a sanitary condition. Such work not to exceed fifteen (15) minutes and not to be construed as overtime. Such clean-up time shall not be utilized to prepare for the following day's business and shall not be accumulative from day to day.

**SECTION 4.8—*Rest Periods.*** Each employee shall have two 10-minute rest periods daily, the first to be taken approximately midway in the morning and the second to be taken about midway in the afternoon.

## **ARTICLE V**

### **MARKET OPERATING HOURS**

**SECTION 5.1—*Market Operating Hours.*** Market operating hours shall be 9:00 a.m. to

6:00 p.m. Monday through Saturday, inclusive. No customer shall be served who comes into the market before or after the hours set forth above, except that customers in the market at the closing hour shall be served.

## ARTICLE VI

### HOLIDAYS, VACATION, AND OTHER COMPENSABLE ABSENCES

**SECTION 6.1—Holidays.** There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day. When and if Victory Day is declared a National Legal Holiday, it shall be made a part of this Article.

Employees who are absent the regularly scheduled workday before, or after, a holiday, or both, except in the case of proven illness or unavoidable absence shall not receive holiday pay, but shall be paid only for the hours actually worked.

During a holiday week the employee shall receive a full week's pay for four (4) days of work; if an employee works the fifth (5th) day during a holiday week, he shall be paid the extra day or half day rates set out in Article III.

### SECTION 6.2—Vacations.

(a) *Length of Vacations.* Each full-time employee covered by this contract who qualifies shall be entitled to a vacation with pay

for each year of full-time employment in accordance with the following schedule:

Number of Successive Years of Full-time Employment	Number of Weeks of Vacation with Pay
1 year .....	1
2 through 9 years, inclusive..	2
10 through 19 years, inclusive	3
20 or more years.....	4

(b) *Definitions.* The term "year of employment" means the period beginning on the date of most recent employment (or, after the first year, on the anniversary date of such employment) and ending on the day prior to said date twelve months later.

The term "successive" used in connection with employment means employment uninterrupted by separation from service.

(c) *Administration of Vacation Provisions.*

(1) All vacations shall be subject to necessary scheduling by the Employer, who may limit the number of employees who may be on vacation at any one time.

(2) The vacation schedule shall be posted in each market. When a change in a vacation becomes necessary, the Employer and the employee involved shall be given reasonable advance notice of such change.

(3) All vacations shall be for calendar weeks. Vacations of three weeks may be split by mutual agreement between the employee and Employer but not into any period of less than one week. Vacations of less than three

weeks duration may not be split except in unusual cases and then only where the individual's application is approved by the Employer as consistent with efficient operation of the market.

(4) Whenever a holiday recognized under this contract falls within an employee's vacation period, the employee shall receive an extra day's pay or subsequent day off at the Employer's option.

(5) A week's vacation pay shall be calculated by multiplying forty (40) times the employee's regular straight-time hourly rate for the classification to which he is assigned at the time of taking his vacation.

(6) No employee shall be entitled to more than one vacation for any employment year.

#### **SECTION 6.3—Absences Due to Injuries.**

Any regular employee unable to work because of injuries received during the regularly scheduled workweek and whose injuries arose out of or during the course of his employment shall be entitled to a full day's pay for each day lost because of such injuries, but not in excess of four (4) days pay, including pay for the day of the injury, in the first seven (7) calendar days following the accident; provided, however, that the employee shall report upon receipt of the injury to the Employer's physician whose decision with respect to the length of time required off shall be controlling; provided further, that nothing in this provision shall

affect any rights accrued to either party under the State Workmen's Compensation Act, and that the Employer shall receive credit for any payment made under this provision should compensation be awarded by the Industrial Commission of Illinois.

**SECTION 6.4—*Funeral Leave.*** The Employer agrees to pay full-time employees for necessary absence on account of death in the immediate family up to and including a maximum of three (3) scheduled work days at straight time, provided the employee attends the funeral. The term "immediate family" shall mean spouse, parent, child, brother, sister, father-in-law, mother-in-law, or any relative residing with the employee or with whom the employee is residing.

**SECTION 6.5—*Jury Pay.*** When any full-time employee who is covered by this agreement is summoned for jury service, he shall be excused from work for the day on which he reports for jury service and/or serves. He shall receive for each such day on which he so reports and/or serves and on which he otherwise would have worked the difference between eight (8) times his regular hourly rate of pay and the payment he receives for jury service, if any; provided, however, that no payment shall be made under the provisions of this Section to any employee summoned for jury service unless he shall have advised the Employer of the receipt by him of such jury summons not later than the next regularly scheduled workday after re-



ceipt of said summons. Before any payment shall be made to any employee hereunder, he shall present to the Employer proof of his summons for service, and of the time served and the amount of pay received therefor, if he shall have served as juror. The provisions of this Section shall apply only when an employee is summoned for jury duty and shall not apply if an employee volunteers to serve as a juror. When an employee is released for a day or part of day during any period of jury service, he shall report to his store for work.

## ARTICLE VII

### HEALTH AND WELFARE

**SECTION 7.1—*Effective Date.*** This Article shall become effective October 1, 1962.

**SECTION 7.2—*Eligible Employee and Eligibility Date Defined.*** The term "eligible employee" means a full-time employee who has completed his probationary period. Such an employee becomes eligible for health and welfare benefits on the first day of the first calendar month following the completion of his probationary period, such date being hereafter referred to as his eligibility date.

**SECTION 7.3—*Employee Option.***

On or prior to September 1, 1962 all eligible employees of the Employer shall elect by secret written ballot one of the following options:

**Option 1. *Health and Welfare Coverage Under the Joint Union-Employer Plan***

Health and Welfare benefit coverage under the terms and provisions of a joint union-employer health and welfare plan to be established by the parties pursuant to Section 7.4; or,

**Option 2. *Health and Welfare Coverage Under the Employer's Plan in Effect on October 7, 1961***

Health and Welfare Coverage under the terms and provisions of the Employer's Health and Welfare Plan in effect on October 7, 1961, such benefits (except as to optional life insurance) to be furnished cost-free to the employees.

If the majority of the eligible employees of the employer shall elect Option 1 or Option 2, then the Employer, the Union and the employees shall be bound by such election for the balance of the term of this agreement.

In the event the Employer did not have a health and welfare program in effect on October 7, 1961, then its employees shall be covered under the Joint Union-Employer Plan.

**SECTION 7.4—*Joint Union-Employer Health and Welfare Trust Fund.*** If a majority of its eligible employees shall have elected Option 1 above, then effective Octo-

ber 1, 1962 with respect to employees eligible on that date and effective on the eligibility date with respect to employees becoming eligible after October 1, 1962, the Employer shall contribute the sum of Twenty-one Dollars (\$21.00) per month for each eligible employee to the Health and Welfare Trust Fund to be established pursuant to a Health and Welfare Trust Agreement to be hereafter entered into by the parties hereto for the purpose of providing such health and welfare benefits.

Contributions to the Trust Fund shall be discontinued as of the first of the month following:

- a) Termination of employment.
- b) A lay-off or leave of absence of 30 calendar days or more.
- c) The employee's ceasing to be an eligible employee due to his failure to work thirty-two (32) hours or more per week for eight consecutive weeks.

Payment by the Employer into the Joint Union-Employer Health and Welfare Trust Fund with respect to any employee shall be in lieu of all Employer established plans or programs, including sickness and accident disability pay, hospital, medical and surgical care, major medical expense and group life and accident insurance, each of which programs shall automatically terminate with respect to such employee effective on the date liability to make such contributions first accrues.

**SECTION 7.5—*Employer's Health and Welfare Plan.*** If a majority of its eligible employees shall have elected Option 2 above, then effective October 1, 1962 with respect to employees eligible on that date and effective on the eligibility date with respect to employees becoming eligible after October 1, 1962, the Employer shall provide and maintain, cost-free to the employees except as to optional life insurance, not less than the benefits contained in the Employer's Health and Welfare Plan in effect on October 7, 1961, subject to the terms and conditions contained therein as modified by this Article; and the Employer shall not be obligated to contribute to the Joint-Union-Employer Health and Welfare Trust Fund.

## **ARTICLE VIII**

### **UNION-MANAGEMENT RELATIONS**

**SECTION 8.1—*Union Employees.*** The Union, if requested, will furnish men, insofar as they are available, who will work to the best interest of the Employer in every way, just and lawful, who will give honest and diligent service to patrons of the Employer's establishment, and who will do everything within their power for the uplifting of the meat industry.

**SECTION 8.2—*Union Shop.*** It shall be a condition of employment that all employees of the Employer covered by this agreement

who are members of the Union in good standing on the date on which this agreement is signed shall remain members in good standing and those who are not members on the date which this agreement is signed shall, on the thirty-first day following the date on which this agreement is signed, become and remain members in good standing in the Union. It shall also be a condition of employment that all employees covered by this agreement and hired on or after the date on which this agreement is signed, shall, on the thirty-first day following the beginning of such employment become and remain members in good standing in the Union.

**SECTION 8.3—*Business Representatives.*** Union Business Representatives shall be admitted to the Employer's market premises during the hours meat department employees are working for the purpose of ascertaining whether or not this Agreement is being observed and for collecting dues. Such activities shall be conducted in such a manner as not to interfere with the orderly operation of Employer's business. Business representatives shall have full authority to request the immediate discharge of any employee who has voluntarily agreed with his Employer to receive wages below the wage scale fixed herein.

**SECTION 8.4—*Discharge.*** During an employee's probationary period, that is, during his first thirty (30) days of employment, an employee may be discharged for any reason at the sole discretion of the Employer. After

an employee has completed the probationary period, such employee shall not be discharged or otherwise disciplined without just cause. Drunkenness, dishonesty, incompetency, incivility or an oversupply of help will be sufficient cause for dismissal.

**SECTION 8.5—*Display of Contract and Union Shop Cards.*** This Agreement is to be kept posted in the place of employment so that every employee may have equal and easy access to same.

It will be the duty of the Employer to prominently display Union shop cards in all establishments wherein Union meat cutters are employed. These cards shall remain the property of the Union, and the Employer shall have their usage only until such time as the Union shall request their return. The Employer agrees to surrender same immediately upon demand by the Union.

**SECTION 8.6—*Withdrawal Cards.*** Any member of Local 546 who is in good standing and is in business for himself who may de-

sire to affiliate with the.....  
may apply for a withdrawal card, provided the request be accompanied by the similar request from the.....

Withdrawal card may be obtained upon application to the Executive Board of Local 546.



## ARTICLE IX

### GRIEVANCES AND ARBITRATION

**SECTION 9.1—*No Strike; No Lockout.*** The Union and the Employer agree on the need for the continuance of their service to the public without interruption. Both recognize this objective as necessary to the security of the Employer and its people. Both therefore, specifically pledge themselves to help assure that security by using the procedures agreed upon between them for the adjustment of disputes and grievances in all cases where there is any difference of opinion concerning the rights of either under this contract or the interpretation or application of any provision of it. Therefore, subject to the exceptions stated herein, during the term of this agreement there shall be no strikes, work stoppage, diminution or suspension of work of any kind whatsoever on the part of the Union or its membership, nor shall there be any lockout on the part of the Employer. No officer or representative of the Union shall authorize, instigate, aid or condone any strike, work stoppage, diminution or suspension of work of any kind whatsoever prohibited by the provisions of this paragraph. No employee shall participate in any such prohibited activities.

The Union reserves the right to strike and/or picket any market of the Employer wherein the Employer continues, after receipt of a written grievance, to sell, outside of the market operating hours prescribed in

Article V, meat products under the Union's jurisdiction not specifically authorized for sale outside of such market operating hours.

The Union further reserves the right to strike and/or picket the market or markets involved in the grievance in the event the Employer shall fail or refuse to comply with any decision of a Board of Arbitration issued pursuant to a proceeding under Section 9.3 of this Article within ten (10) days after notice thereof. The Employer reserves the right to declare a lockout should the Union fail or refuse to comply with any decision of a Board of Arbitration within ten (10) days after notice thereof.

**SECTION 9.2—*Time Limit on Grievances.***  
Grievances of any nature must be made within forty-five (45) calendar days after the cause giving rise to the grievance becomes evident; and wage claims shall not be valid and collectible for a period earlier than ninety (90) days prior to the date of filing the grievance or the date the grievance arose, whichever date is most recent.

**SECTION 9.3—*Grievances and Arbitration.***  
Should any dispute or grievance arise between the Employer and the Union or between the Employer and its employees, concerning the application and/or construction of this Contract, the parties agree that such matter shall be adjusted, if possible, by negotiations. In the event the dispute or grievance cannot be composed by negotiations

within fifteen (15) days after the inception of the matter in dispute, then it shall be submitted immediately to a Board of Arbitration, consisting of three (3) persons, for final and binding decision. Either party may institute said arbitration proceedings by giving the other party notice thereof in writing, naming one person to act on his behalf on said Arbitration Board; and the other party shall, within five (5) days after receipt of such written notice, name one person to act on his behalf on said Arbitration Board. These two so selected shall designate the third member or referee of the Board. In the event these two so selected shall be unable, within fifteen (15) days, to agree upon the third member or referee, then the third member of the Board shall forthwith be designated under the rules and procedures of the Federal Mediation and Conciliation Service. The Board shall hold hearings and render its decision in writing within thirty (30) days with respect to a dispute under Article I, Section 1.2(d) and within ninety (90) days with respect to any other dispute. The Board's decision shall be final and binding upon the grievant employee, the Union and the Employer. The decision of any two members of the Board shall be the decision of the Board. If the parties shall agree upon one person to act as Arbitrator, his decision shall be as binding as that of a Board of Arbitration. The compensation and expense, if any, of witnesses and the cost of other evidence shall be borne by the party on whose behalf

witnesses are called or the evidence is introduced. Each party shall pay for the compensation and expenses of the Arbitrator appointed by it. The compensation and expenses of the third Arbitrator and all other costs incurred in conducting the arbitration proceedings shall be borne equally by the parties hereto.

## ARTICLE X

### TERM

**SECTION 10.1—Initial Term.** This Agreement shall become effective at 12:01 a.m., October 8, 1961, and shall expire at 12:00 midnight, October 3, 1964.

**SECTION 10.2—Renewal Term.** If either party wishes to modify this Agreement at its expiration, it shall serve notice in writing of such request upon the other party not less than sixty (60) days prior to the expiration date. In the absence of the service of such notice, this Contract shall automatically renew itself for a period of one year and from year to year thereafter, it being further agreed that the Contract expiration date shall be the first Saturday in October of each year.

**SECTION 10.3—Retroactivity.** This Contract shall remain in full force and effect until a new agreement is negotiated, but not beyond an additional sixty (60) days beyond the Contract expiration date. Any increases

in wages set out in Article III resulting from the negotiations following the Contract expiration date shall be retroactive to the date of expiration, but not exceeding ninety (90) calendar days, whichever period shall be shorter. There shall be no retroactivity with respect to other contract changes, such as changes in working hours or premium or overtime pay.

Executed at Chicago, Illinois, this \_\_\_\_\_

day of \_\_\_\_\_, 19 \_\_\_\_\_.

**LOCAL 546, AMALGAMATED MEAT CUTTERS AND  
BUTCHER WORKMEN OF NORTH AMERICA,  
AFL-CIO**

By \_\_\_\_\_  
*President*

By \_\_\_\_\_  
*Secretary-Treasurer*

Employer \_\_\_\_\_

By \_\_\_\_\_

Employer's Address \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**SUPPLEMENTAL AGREEMENT  
TO  
THE 1961-1964 SERVICE CONTRACT**

**Between**

---

**and LOCAL 546, Amalgamated Meat  
Cutters and Butcher Workmen of  
North America, AFL-CIO**

**LOCAL 546, AMALGAMATED MEAT  
CUTTERS AND BUTCHER WORKMEN  
OF NORTH AMERICA, AFL-CIO and**

---

hereby agree that this Supplemental Agreement shall supplement and modify the current collective bargaining agreement between Local 546, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO and the aforesaid Employer which became effective October 8, 1961 and continues in full force and effect until October 3, 1964.

1. It is agreed that nothing herein shall be construed as a waiver of any provision of the said collective bargaining agreement.

2. The aforesaid collective bargaining agreement shall have added to it as Article XI the following provisions:



## ARTICLE XI

### SENIORITY

**SECTION 11.1—Effective Date of Article.** This Article shall become effective May 1, 1963.

**SECTION 11.2—Seniority Defined.** Seniority means the rights defined herein secured by employees by length of continuous full-time employment with the Employer, that is, full-time employment uninterrupted by termination of service.

Seniority starts from the last date when the employee starts work as a full-time employee, provided, however, that new employees shall not acquire any seniority rights until they have completed the probationary period of thirty (30) days after which their seniority shall date back to the date the employee started work. When two or more employees start work the same day, the date of birth shall determine their relative seniority.

An employee's seniority shall be terminated if he: (1) quits; (2) retires; (3) is discharged; (4) fails to report after a layoff within seven (7) calendar days after the Employer sends to the last address known to the Employer a written notification to return to work (with a copy to the Union); (5) refuses, as an alternative to being laid off, to accept work in his classification in another store within the collective bargaining area; (6) refuses, after having been laid off, to accept work in his job classification in

any store in the collective bargaining area; or (7) has been laid off by the Employer for a period of one year; provided that at the end of the sixth month and at the end of each month thereafter, the laid off employee, in order to retain his recall rights, must notify, in writing, the Employer of his desire to be retained on recall status.

The "in-service" date of an employee who progresses from Apprentice to Journeyman, or who is demoted from Head Meat Cutter to Journeyman shall not be affected by such change in classification.

**SECTION 11.3—*Layoffs and Recalls After Layoffs.*** Where the employee's qualifications to perform the work available are equal, including in the case of head meat cutters the ability to organize and direct the work of others, seniority shall control the order of layoffs and recalls after layoffs of full-time employees on an individual store basis within the following job classifications, head meat cutters, journeymen, apprentices and wrappers (where covered by the Union agreement); provided that in the event the Employer closes a market or meat department, he shall transfer all employees with five years or more continuous full-time service to other markets or meat departments determined by the Employer, provided such transfers are consistent with the needs of the business.

Any employee transferred from an existing store to another store shall, if subject to a layoff within a period of ninety (90) days

after the transfer, have the right to return to the store from which he was transferred and assume the job that his seniority warrants.

IN WITNESS WHEREOF, the authorized representatives of the parties set their

hands this \_\_\_\_\_ day of \_\_\_\_\_, 1963.

LOCAL 546, AMALGAMATED MEAT CUTTERS AND  
BUTCHER WORKMEN OF NORTH AMERICA,  
AFL-CIO

By \_\_\_\_\_  
*President*

By \_\_\_\_\_  
*Secretary-Treasurer*

Employer \_\_\_\_\_

By \_\_\_\_\_

Employer's Address \_\_\_\_\_  
\_\_\_\_\_

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS.

PLAINTIFF'S EXHIBIT 8

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

PLAINTIFF'S EXHIBIT 9

*Pl. Ex. 9*

*Self-Service*

*Contract*

*1961-1964*



**LOCAL 546**

**Amalgamated Meat Cutters  
and Butcher Workmen  
of North America**

**AFL-CIO**

**R. EMMETT KELLY**

**Secretary-Treasurer**





**SELF-SERVICE  
CONTRACT**

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**1961-64**  
**SELF-SERVICE CONTRACT**  
**AMALGAMATED MEAT CUTTERS**  
**AND BUTCHER WORKMEN**  
**OF NORTH AMERICA-AFL-CIO**

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**October 8, 1961, through October 3, 1964**

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**Articles of Agreement** governing  
Self-Service Meat Markets in the City of  
Chicago and County of Cook, entered into

between \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

hereinafter called the "Employer," and the  
**AMALGAMATED MEAT CUTTERS**  
**AND BUTCHER WORKMEN OF**  
**NORTH AMERICA, LOCAL 546 (AFL-**  
**CIO),** hereinafter sometimes referred to as  
the Union, acting as the exclusive collective  
bargaining agent for all employees covered  
by this Agreement.

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## ARTICLE I

### GENERAL

**SECTION 1.1—*Scope of Contract.*** It is agreed that this Contract shall govern the hours, wages and other conditions of employment of Employer's meat department employees in Self-Service Meat Markets only within the geographical jurisdiction of Local 546, and that the hours, wages and other conditions of employment of Employer's meat department employees in Service Markets are covered by a separate Contract. It is further agreed that the Employer shall have the sole discretion of determining from time to time which system of merchandising, service or self-service, shall be utilized in each of the Employer's markets; provided that the Employer shall comply with the wages, hours and other contractual conditions of employment pertaining to the system of merchandising used in that market.

### **SECTION 1.2—*Definitions:***

(a) ***Apprentice:*** An apprentice is an employee who is in training to become a Journeyman Meat Cutter. Apprentices must be at least sixteen (16) years of age.

Apprentices may be employed at a ratio of not exceeding three (3) for each seven (7)



Journeyman employed by the Employer within the jurisdiction of the Local. A quarterly report covering the number of Apprentices employed in relationship to the number of Journeymen shall be furnished the Union. The Employer agrees to rotate all Apprentices in his markets so as to give them sufficient, well-rounded experience to qualify them as Journeymen at the end of the three (3) year apprenticeship period. Apprentices shall not work part time or as extra men on Saturdays or the day preceding holidays.

(b) *Journeyman*: After serving three years of apprenticeship (two and one-half (2½) years if the apprentice furnishes the Employer with a Certificate issued by the Washburne Trade School that he has satisfactorily completed the full meat training course of said school), an employee shall be classified as a Journeyman Meat Cutter and shall be paid the Journeyman rate of pay.

(c) *Head Meat Cutter*: The term "Head Meat Cutter" means a Journeyman meat cutter who is responsible for the efficient management of the market.

(d) *Self-Service and Service*: A self-service market is one in which fresh beef, veal, lamb, mutton or pork are available for sale on a pre-package self-service basis. It is agreed that any market which is operated on a partially service and partially self-service basis shall be classified as a self-service market if

any fresh beef, veal, lamb, mutton or pork are made available for sale on a pre-package self-service basis, even though there is also a service counter offering custom cutting for those who prefer it. Such semi-self-service market shall be considered a self-service market subject to the terms and conditions and wage scale contained in this Self-Service Contract.

If no fresh beef, veal, lamb, mutton or pork are sold on a self-service basis, then the market is a Service market and shall be operated in accordance with the Service Contract. It is further expressly understood and agreed that if all fresh beef, veal, lamb, mutton and pork sold by a market are handled and sold on a service basis only, the fact that a market handles and sells, on a self-service basis, delicatessen and other meat products now excepted from the jurisdiction of the Union under the Service Contract shall not operate to classify such market as a self-service market; but such semi-self-service market shall nevertheless be considered a service market subject only to the wage scales, hours and other conditions provided in the Service Contract.

In the event of any dispute as to whether a meat market shall be classed as a service market subject to the terms and conditions of the Service Contract or a self-service market subject to the terms and conditions of this Contract, the decision of the Union shall be binding unless and until said decision has

been set aside by any arbitration proceedings had pursuant to the terms of this Contract; provided, however, that either party may require that such dispute be submitted to arbitration forthwith.

**SECTION 1.3—Notices.** All notices required under this Contract shall be deemed to be properly served if delivered in writing personally or sent by certified or registered mail to the offices of the Union at 130 North Wells Street, Chicago 6, Illinois, or to the Employer at the address designated below, or to an employee at his home or residence address, or to any subsequent address which the Union, the employee, or the Employer may designate in writing for such purpose. Date of service of a notice served by mail shall be the date on which such notice is postmarked by a post office of the United States Post Office Department.

**SECTION 1.4—Partial Invalidity.** Nothing contained in this agreement is intended to violate any Law, Rule, or Regulation made pursuant thereto. If any part of this Agreement is construed by a court or board of competent jurisdiction to be in such violation, then that part shall be made null and void, the remainder of the Contract shall continue in full force and the parties will immediately begin negotiations to replace the void part with a valid provision.

**SECTION 1.5—*Authority of Signing Parties.*** The parties hereto certify that they are empowered and duly authorized to sign this Agreement.

**SECTION 1.6—*Successors and Assigns.*** This agreement shall be binding upon the Employer herein and its successors and assigns.

**SECTION 1.7—*Effective Date.*** Unless the context of a provision indicates otherwise, all provisions of the contract become effective upon the date of execution of the contract.

## **ARTICLE II**

### **RECOGNITION AND JURISDICTION**

**SECTION 2.1—*Recognition.*** The Employer recognizes and agrees that said Union is and shall be the sole and exclusive collective bargaining agency for and on behalf of all employees in the meat department of said Employer who process, pack, wrap, handle and sell frozen and fresh meats on Employer's premises, and that it will not negotiate with any but the duly elected officers of the Union nor contract with anyone not affiliated with the Union.

**SECTION 2.2—*Processing.*** In Self-Service markets employees covered by this Contract shall perform all cutting, preparing, fabricat-

ing, handling and packaging into retail cuts of all fresh fish and rabbits and all fresh or frozen beef, veal, pork, lamb and mutton, said work to be done only on the premises or immediately adjacent thereto; provided, however, that frozen specialty meat items such as the items enumerated in Section 2.3—Item 6 below, frozen fresh poultry, cut-up or whole and vacuum or comparably tight-wrapped ham slices, shanks and butts may be prepared by the packer, supplier or employer off the premises.

**SECTION 2.3—Sale.** In self-service markets, employees covered by this Contract shall have the exclusive jurisdiction over the sale of all fish, poultry, rabbits and meat, whether frozen fresh or fresh, and delicatessen meats, except sliced packaged bacon, sliced packaged Canadian bacon, canned and glassed meats of all kinds and all meats not for human consumption. The following meats subject to the Union's jurisdiction over sale may nevertheless be sold from self-service cases outside the market hours set out in Article V provided that Employees covered by this Contract stock the cases:

- (1) All delicatessen meats including:
  - (a) Ready to eat prepared meats, poultry and fish;
  - (b) Sliced boiled, baked or barbecued ham;

- (c) Sliced packaged dried beef;
  - (d) Smoked sausage;
  - (e) Fresh pork sausage.
- (2) Frozen fresh poultry, cut-up or whole;
  - (3) Fresh poultry, cut-up or whole, processed on the premises;
  - (4) Frozen packaged fish;
  - (5) Smoked butts, smoked ribs and smoked hocks;
  - (6) Frozen specialty meat items such as frozen and formed (flaked or chopped) patties and choppettes, with or without butter or vegetable, breaded or unbreaded.

provided further that frozen fresh poultry, fresh poultry (cut up or whole) processed on the premises, fresh pork sausage and the frozen meat specialty items described above are priced or prepriced by meat department employees on the premises.

## **ARTICLE III**

### **WAGES**

**SECTION 3.1—*Wage Rates—Weekly, Extra Day and Overtime.*** Not less than the following wages shall be paid during the term of this Contract:



# **(a) FIRST AND SECOND CONTRACT YEARS, 10-8-61 THROUGH 10-5-63**

	Minimum Weekly Wage for Basic Workweek	Extra Day Rates Full Day Half Day	Hourly Rates* Straight Time OverTime
Head Meat Cutter .....	\$135.50	\$29.10	\$3.3875
Journeyman .....	129.00	27.80	3.225
Apprentices:			
0 to 6 Months .....	75.00	17.00	1.875
6 to 12 " .....	82.00	18.40	2.05
12 to 18 " .....	89.00	19.80	2.225
18 to 24 " .....	94.00	20.80	2.35
24 to 36 " .....	100.00	22.00	2.50
Extra Journeyman—\$129.00 for a basic workweek; \$27.80 per full day; \$13.90 per half day.			

\*Hourly rates may be rounded off to the nearest quarter-cent, half-cent or whole cent, depending on the Employer's payroll practice.

Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages or working conditions.

# **(b) THIRD CONTRACT YEAR, 10-6-63 THROUGH 10-3-64**

	Minimum Weekly Wage for Basic Workweek	Extra Day Rates		Hourly Rates*	
		Full Day	Half Day	Straight Time	Overtime
Head Meat Cutter .....	\$140.50	\$30.10	\$15.05	\$3.5125	\$5.2875
Journeyman .....	134.00	28.80	14.40	3.35	5.025
<b>Apprentices:</b>					
0 to 6 Months .....	75.00	17.00	8.50	1.875	2.8125
6 to 12 " .....	83.00	18.60	9.30	2.075	3.1125
12 to 18 " .....	91.00	20.20	10.10	2.275	3.4125
18 to 24 " .....	97.00	21.40	10.70	2.425	3.6375
24 to 36 " .....	104.00	22.80	11.40	2.60	3.90
Extra Journeyman—\$134.00 for a basic workweek; \$28.80 per full day; \$14.40 per half day.					

\*Hourly rates may be rounded off to the nearest quarter-cent, half-cent or whole cent, depending on the Employer's payroll practice.

**Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages or working conditions.**

**SECTION 3.2—*Payment of Extra Day Rates.*** The extra day and a half day rates shall be paid whenever an employee works the sixth (6th) day of a regular workweek or the fifth (5th) day of a holiday week. These rates provide a \$2.00 premium over the average daily rate for a full day and a \$1.00 premium over the average for a half day.

If the Employer becomes subject to state or federal legislation which requires the payment of time and one-half regular hourly rates of pay for all work performed in excess of forty-four (44), forty-two (42), or forty (40) hours in a workweek, then effective on the date such law shall become effective such legislative requirement shall replace the above provision requiring the payment of extra day rates and said extra day rate provision shall cease to have any further effect.

**SECTION 3.3—*Extra Help.*** Extra help shall be paid at the Journeyman extra day rates set out above, except in the event that they work the full week when they are to receive the minimum weekly wage set out above for their classification.

## **ARTICLE IV**

### **WORKING HOURS AND OTHER CONDITIONS OF EMPLOYMENT**

**SECTION 4.1—*Basic Workday.*** Eight (8) hours shall constitute the basic workday which shall be scheduled to begin no earlier

than 8:00 a.m. and to end no later than 6:00 p.m. One hour shall be allowed for lunch in all markets whether manned by one or more employees, said lunch hour to begin no earlier than 11:00 a.m. and to end no later than 2:00 p.m. There shall be no clean-up time after 6:00 p.m., except clean-up may be performed after 6:00 p.m. provided that overtime is paid for all work performed after 6:00 p.m.

**SECTION 4.2—Basic Workweek.** Five (5) basic workdays (40 hours) shall constitute the basic workweek which shall be worked—Monday through Saturday, inclusive. One full day off within the week of Monday through Saturday, inclusive, shall be allowed each employee in each shop. The day off shall be at the Employer's discretion except that it may be rotated or changed in accordance with the mutual agreement of the Employer and his employees.

**SECTION 4.3—Sixth Day Guarantee.** Any employee called to work on the sixth (6th) day in any regular workweek shall be guaranteed four (4) hours ( $\frac{1}{2}$  day) of work. Reporting time on the 6th day shall be no earlier than 8:00 a.m. for a full day or morning half day, and no earlier than 1:00 p.m. for an afternoon half day. It is agreed that the Head Meat Cutters and Journeymen shall be given preference over apprentices for work on the sixth (6th) full or half day during a regular workweek and on the fifth (5th) full or half day during a holiday week.

**SECTION 4.4—Overtime.** At the Employer's discretion overtime at overtime rates may be worked after eight (8) hours in any one day and behind locked doors after 6:00 p.m.

**SECTION 4.5—Inventory.** Employees shall not take inventory outside of regular working hours.

**SECTION 4.6—Laundry, Tools and Equipment.** Laundry, tools and sharpening of tools shall be furnished free of cost by Employer. The kinds of saws, power saws, conveyors, sealing irons, sealing plates, staplers, recording and printing sealers for weighing, vacuum sealing equipment, packaging equipment and other tools which the Employer may use shall be determined by the Employer.

**SECTION 4.7—Rest Period.** Each employee shall have two (2) rest periods of ten (10) minutes each to be taken daily at the following times: Cutting Room Employees, 10:00 a.m. to 10:10 a.m. and 3:00 p.m. to 3:10 p.m.; Packaging Room Employees including Employees Servicing the Self-Service Counters, 10:10 a.m. to 10:20 a.m. and 3:10 p.m. to 3:20 p.m.

## **ARTICLE V**

### **MARKET OPERATING HOURS**

**SECTION 5.1—Market Operating Hours.** Market operating hours shall be 9:00 a.m. to 6:00 p.m. Monday through Saturday, inclusive. No customer shall be served who comes

into the market before or after the hours set forth above.

The parties agree that in the event the market operating hours of service markets are extended at any time during the term hereof, the extension shall likewise apply to the market operating hours of self-service markets.

**SECTION 5.2—*Excepted Product Sales.*** In those stores in which the grocery departments remain open after 6:00 p.m. only the following products may be sold after 6:00 p.m. and on Sundays and holidays:

- (1) Sliced packaged bacon and Canadian bacon, canned and glassed meats of all kinds, and all meats not for human consumption (being those products excepted from the Union's jurisdiction over sale);
- (2) All delicatessen meats including:
  - (a) Ready to eat prepared meats, poultry and fish;
  - (b) Sliced boiled, baked or barbecued ham;
  - (c) Sliced packaged dried beef;
  - (d) Smoked sausage;
  - (e) Fresh pork sausage.
- (3) Frozen fresh poultry, cut-up or whole;
- (4) Fresh poultry, cut-up or whole, processed on the premises;
- (5) Frozen packaged fish;
- (6) Smoked butts, smoked ribs and smoked hocks;



- (7) Frozen specialty meat items such as frozen and formed (flaked or chopped) patties and chopettes, with or without butter or vegetable, breaded or unbreaded.

## ARTICLE VI

### HOLIDAYS, VACATION, AND OTHER COMPENSABLE ABSENCES

**SECTION 6.1—Holidays.** There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day. When and if Victory Day is declared a National Legal Holiday, it shall be made a part of this Article.

Employees who are absent the regularly scheduled workday before, or after, a holiday, or both, except in the case of proven illness or unavoidable absence shall not receive holiday pay, but shall be paid only for the hours actually worked.

During a holiday week the employee shall receive a full week's pay for four (4) days of work; if an employee works the fifth (5th) day during a holiday week, he shall be paid the extra day or half day rates set out in Article III.

### SECTION 6.2—Vacations.

(a) *Length of Vacations.* Each full-time employee covered by this contract who qualifies shall be entitled to a vacation with pay

for each year of full-time employment in accordance with the following schedule:

Number of Successive Years of Full-time Employment	Number of Weeks of Vacation with Pay
1 year .....	1
2 through 9 years, inclusive..	2
10 through 19 years, inclusive	3
20 or more years.....	4

(b) *Definitions.* The term "year of employment" means the period beginning on the date of most recent employment (or, after the first year, on the anniversary date of such employment) and ending on the day prior to said date twelve months later.

The term "successive" used in connection with employment means employment uninterrupted by separation from service.

(c) *Administration of Vacation Provisions.*

(1) All vacations shall be subject to necessary scheduling by the Employer, who may limit the number of employees who may be on vacation at any one time.

(2) The vacation schedule shall be posted in each market. When a change in a vacation becomes necessary, the Employer and the employee involved shall be given reasonable advance notice of such change.

(3) All vacations shall be for calendar weeks. Vacations of three weeks may be split by mutual agreement between the employee and Employer but not into any period of less than one week. Vacations of less than three

weeks duration may not be split except in unusual cases and then only where the individual's application is approved by the Employer as consistent with efficient operation of the market.

(4) Whenever a holiday recognized under this contract falls within an employee's vacation period, the employee shall receive an extra day's pay or subsequent day off at the Employer's option.

(5) A week's vacation pay shall be calculated by multiplying forty (40) times the employee's regular straight-time hourly rate for the classification to which he is assigned at the time of taking his vacation.

(6) No employee shall be entitled to more than one vacation for any employment year.

#### **SECTION 6.3—*Absences Due to Injuries.***

Any regular employee unable to work because of injuries received during the regularly scheduled workweek and whose injuries arose out of or during the course of his employment shall be entitled to a full day's pay for each day lost because of such injuries, but not in excess of four (4) days pay, including pay for the day of the injury, in the first seven (7) calendar days following the accident; provided, however, that the employee shall report upon receipt of the injury to the Employer's physician whose decision with respect to the length of time required off shall be controlling; provided further, that nothing in this provision shall

affect any rights accrued to either party under the State Workmen's Compensation Act, and that the Employer shall receive credit for any payment made under this provision should compensation be awarded by the Industrial Commission of Illinois.

**SECTION 6.4—Funeral Leave.** The Employer agrees to pay full-time employees for necessary absence on account of death in the immediate family up to and including a maximum of three (3) scheduled work days at straight time, provided the employee attends the funeral. The term "immediate family" shall mean spouse, parent, child, brother, sister, father-in-law, mother-in-law, or any relative residing with the employee or with whom the employee is residing.

**SECTION 6.5—Jury Pay.** When any full-time employee who is covered by this agreement is summoned for jury service, he shall be excused from work for the day on which he reports for jury service and/or serves. He shall receive for each such day on which he so reports and/or serves and on which he otherwise would have worked the difference between eight (8) times his regular hourly rate of pay and the payment he receives for jury service, if any; provided, however, that no payment shall be made under the provisions of this Section to any employee summoned for jury service unless he shall have advised the Employer of the receipt by him of such jury summons not later than the next regularly scheduled workday after re-

ceipt of said summons. Before any payment shall be made to any employee hereunder, he shall present to the Employer proof of his summons for service, and of the time served and the amount of pay received therefor, if he shall have served as juror. The provisions of this Section shall apply only when an employee is summoned for jury duty and shall not apply if an employee volunteers to serve as a juror. When an employee is released for a day or part of day during any period of jury service, he shall report to his store for work.

## ARTICLE VII

### HEALTH AND WELFARE

SECTION 7.1—*Effective Date.* This Article shall become effective October 1, 1962.

SECTION 7.2—*Eligible Employee and Eligibility Date Defined.* The term "eligible employee" means a full-time employee who has completed his probationary period. Such an employee becomes eligible for health and welfare benefits on the first day of the first calendar month following the completion of his probationary period, such date being hereafter referred to as his eligibility date.

SECTION 7.3—*Employee Option.*

On or prior to September 1, 1962 all eligible employees of the Employer shall elect by secret written ballot one of the following options:

**Option 1. *Health and Welfare Coverage Under the Joint Union-Employer Plan***

Health and Welfare benefit coverage under the terms and provisions of a joint union-employer health and welfare plan to be established by the parties pursuant to Section 7.4; or,

**Option 2. *Health and Welfare Coverage Under the Employer's Plan in Effect on October 7, 1961***

Health and Welfare Coverage under the terms and provisions of the Employer's Health and Welfare Plan in effect on October 7, 1961, such benefits (except as to optional life insurance) to be furnished cost-free to the employees.

If the majority of the eligible employees of the employer shall elect Option 1 or Option 2, then the Employer, the Union and the employees shall be bound by such election for the balance of the term of this agreement.

In the event the Employer did not have a health and welfare program in effect on October 7, 1961, then its employees shall be covered under the Joint Union-Employer Plan.

**SECTION 7.4—*Joint Union-Employer Health and Welfare Trust Fund.*** If a majority of its eligible employees shall have elected Option 1 above, then effective Octo-



ber 1, 1962 with respect to employees eligible on that date and effective on the eligibility date with respect to employees becoming eligible after October 1, 1962, the Employer shall contribute the sum of Twenty-one Dollars (\$21.00) per month for each eligible employee to the Health and Welfare Trust Fund to be established pursuant to a Health and Welfare Trust Agreement to be hereafter entered into by the parties hereto for the purpose of providing such health and welfare benefits.

Contributions to the Trust Fund shall be discontinued as of the first of the month following:

- a) Termination of employment.
- b) A lay-off or leave of absence of 30 calendar days or more.
- c) The employee's ceasing to be an eligible employee due to his failure to work thirty-two (32) hours or more per week for eight consecutive weeks.

Payment by the Employer into the Joint Union-Employer Health and Welfare Trust Fund with respect to any employee shall be in lieu of all Employer established plans or programs, including sickness and accident disability pay, hospital, medical and surgical care, major medical expense and group life and accident insurance, each of which programs shall automatically terminate with respect to such employee effective on the date liability to make such contributions first accrues.

**SECTION 7.5—*Employer's Health and Welfare Plan.*** If a majority of its eligible employees shall have elected Option 2 above, then effective October 1, 1962 with respect to employees eligible on that date and effective on the eligibility date with respect to employees becoming eligible after October 1, 1962, the Employer shall provide and maintain, cost-free to the employees except as to optional life insurance, not less than the benefits contained in the Employer's Health and Welfare Plan in effect on October 7, 1961, subject to the terms and conditions contained therein as modified by this Article; and the Employer shall not be obligated to contribute to the Joint-Union-Employer Health and Welfare Trust Fund.

## **ARTICLE VIII**

### **UNION-MANAGEMENT RELATIONS**

**SECTION 8.1—*Union Employees.*** The Union, if requested, will furnish men, insofar as they are available, who will work to the best interest of the Employer in every way, just and lawful, who will give honest and diligent service to patrons of the Employer's establishment, and who will do everything within their power for the uplifting of the meat industry.

**SECTION 8.2—*Union Shop.*** It shall be a condition of employment that all employees of the Employer covered by this agreement

who are members of the Union in good standing on the date on which this agreement is signed shall remain members in good standing and those who are not members on the date which this agreement is signed shall, on the thirty-first day following the date on which this agreement is signed, become and remain members in good standing in the Union. It shall also be a condition of employment that all employees covered by this agreement and hired on or after the date on which this agreement is signed, shall, on the thirty-first day following the beginning of such employment become and remain members in good standing in the Union.

**SECTION 8.3—*Business Representatives.*** Union Business Representatives shall be admitted to the Employer's market premises during the hours meat department employees are working for the purpose of ascertaining whether or not this Agreement is being observed and for collecting dues. Such activities shall be conducted in such a manner as not to interfere with the orderly operation of Employer's business. Business representatives shall have full authority to request the immediate discharge of any employee who has voluntarily agreed with his Employer to receive wages below the wage scale fixed herein.

**SECTION 8.4—*Discharge.*** During an employee's probationary period, that is, during his first thirty (30) days of employment, an employee may be discharged for any reason at the sole discretion of the Employer. After

an employee has completed the probationary period, such employee shall not be discharged or otherwise disciplined without just cause. Drunkenness, dishonesty, incompetency, incivility or an oversupply of help will be sufficient cause for dismissal.

**SECTION 8.5—*Display of Contract and Union Shop Cards.*** This Agreement is to be kept posted in the place of employment so that every employee may have equal and easy access to same.

It will be the duty of the Employer to prominently display Union shop cards in all establishments wherein Union meat cutters are employed. These cards shall remain the property of the Union, and the Employer shall have their usage only until such time as the Union shall request their return. The Employer agrees to surrender same immediately upon demand by the Union.

**SECTION 8.6—*Concessions to Other Employers.*** The Union agrees that during the term of this Agreement it will not enter into a contract with any other employer which grants to such other employer the right to operate self-service markets for lesser wages or longer hours or any other condition of employment or market operation more favorable to such other employer than those contained in this Contract except upon the condition that this Employer shall receive the benefit of any more favorable terms granted to such other employer.

## ARTICLE IX

### GRIEVANCES AND ARBITRATION

**SECTION 9.1—*No Strike; No Lockout.*** The Union and the Employer agree on the need for the continuance of their service to the public without interruption. Both recognize this objective as necessary to the security of the Employer and its people. Both therefore, specifically pledge themselves to help assure that security by using the procedures agreed upon between them for the adjustment of disputes and grievances in all cases where there is any difference of opinion concerning the rights of either under this contract or the interpretation or application of any provision of it. Therefore, subject to the exceptions stated herein, during the term of this agreement there shall be no strikes, work stoppage, diminution or suspension of work of any kind whatsoever on the part of the Union or its membership, nor shall there be any lockout on the part of the Employer. No officer or representative of the Union shall authorize, instigate, aid or condone any strike, work stoppage, diminution or suspension of work of any kind whatsoever prohibited by the provisions of this paragraph. No employee shall participate in any such prohibited activities.

The Union reserves the right to strike and/or picket any market of the Employer wherein the Employer continues, after receipt of a written grievance, to sell, outside of the market operating hours prescribed in

Article V, meat products under the Union's jurisdiction not specifically authorized for sale outside of such market operating hours.

The Union further reserves the right to strike and/or picket the market or markets involved in the grievance in the event the Employer shall fail or refuse to comply with any decision of a Board of Arbitration issued pursuant to a proceeding under Section 9.3 of this Article within ten (10) days after notice thereof. The Employer reserves the right to declare a lockout should the Union fail or refuse to comply with any decision of a Board of Arbitration within ten (10) days after notice thereof.

**SECTION 9.2—*Time Limit on Grievances.*** Grievances of any nature must be made within forty-five (45) calendar days after the cause giving rise to the grievance becomes evident; and wage claims shall not be valid and collectible for a period earlier than ninety (90) days prior to the date of filing the grievance or the date the grievance arose, whichever date is most recent.

**SECTION 9.3—*Grievances and Arbitration.*** Should any dispute or grievance arise between the Employer and the Union or between the Employer and its employees, concerning the application and/or construction of this Contract, the parties agree that such matter shall be adjusted, if possible, by negotiations. In the event the dispute or grievance cannot be composed by negotiations



within fifteen (15) days after the inception of the matter in dispute, then it shall be submitted immediately to a Board of Arbitration, consisting of three (3) persons, for final and binding decision. Either party may institute said arbitration proceedings by giving the other party notice thereof in writing, naming one person to act on his behalf on said Arbitration Board; and the other party shall, within five (5) days after receipt of such written notice, name one person to act on his behalf on said Arbitration Board. These two so selected shall designate the third member or referee of the Board. In the event these two so selected shall be unable, within fifteen (15) days, to agree upon the third member or referee, then the third member of the Board shall forthwith be designated under the rules and procedures of the Federal Mediation and Conciliation Service. The Board shall hold hearings and render its decision in writing within thirty (30) days with respect to a dispute under Article I, Section 1.2(d) and within ninety (90) days with respect to any other dispute. The Board's decision shall be final and binding upon the grievant employee, the Union and the Employer. The decision of any two members of the Board shall be the decision of the Board. If the parties shall agree upon one person to act as Arbitrator, his decision shall be as binding as that of a Board of Arbitration. The compensation and expense, if any, of witnesses and the cost of other evidence shall be borne by the party on whose behalf

witnesses are called or the evidence is introduced. Each party shall pay for the compensation and expenses of the Arbitrator appointed by it. The compensation and expenses of the third Arbitrator and all other costs incurred in conducting the arbitration proceedings shall be borne equally by the parties hereto.

## ARTICLE X

### TERM

**SECTION 10.1—*Initial Term.*** This Agreement shall become effective at 12:01 a.m., October 8, 1961; and shall expire at 12:00 midnight, October 3, 1964.

**SECTION 10.2—*Renewal Term.*** If either party wishes to modify this Agreement at its expiration, it shall serve notice in writing of such request upon the other party not less than sixty (60) days prior to the expiration date. In the absence of the service of such notice, this Contract shall automatically renew itself for a period of one year and from year to year thereafter, it being further agreed that the Contract expiration date shall be the first Saturday in October of each year.

**SECTION 10.3—*Retroactivity.*** This Contract shall remain in full force and effect until a new agreement is negotiated, but not beyond an additional sixty (60) days beyond the Contract expiration date. Any increases

in wages set out in Article III resulting from the negotiations following the Contract expiration date shall be retroactive to the date of expiration, but not exceeding ninety (90) calendar days, whichever period shall be shorter. There shall be no retroactivity with respect to other contract changes, such as changes in working hours or premium or overtime pay.

Executed at Chicago, Illinois, this \_\_\_\_\_

day of \_\_\_\_\_, 19\_\_\_\_\_.

**LOCAL 546, AMALGAMATED MEAT CUTTERS AND  
BUTCHER WORKMEN OF NORTH AMERICA,  
AFL-CIO**

By \_\_\_\_\_  
*President*

By \_\_\_\_\_  
*Secretary-Treasurer.*

Employer \_\_\_\_\_

By \_\_\_\_\_

Employer's Address \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**SUPPLEMENTAL AGREEMENT  
TO  
THE 1961-1964  
SELF-SERVICE CONTRACT  
Between**

---

**and LOCAL 546, Amalgamated Meat  
Cutters and Butcher Workmen of  
North America, AFL-CIO**

**LOCAL 546, AMALGAMATED MEAT  
CUTTERS AND BUTCHER WORKMEN  
OF NORTH AMERICA, AFL-CIO and**

---

hereby agree that this Supplemental Agreement shall supplement and modify the current collective bargaining agreement between Local 546, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO and the aforesaid Employer which became effective October 8, 1961 and continues in full force and effect until October 3, 1964.

1. It is agreed that nothing herein shall be construed as a waiver of any provision of the said collective bargaining agreement.

2. The aforesaid collective bargaining agreement shall have added to it as Article XI the following provisions:

## ARTICLE XI

### SENIORITY

**SECTION 11.1—*Effective Date of Article.*** This Article shall become effective May 1, 1963.

**SECTION 11.2—*Seniority Defined.*** Seniority means the rights defined herein secured by employees by length of continuous full-time employment with the Employer, that is, full-time employment uninterrupted by termination of service.

Seniority starts from the last date when the employee starts work as a full-time employee, provided, however, that new employees shall not acquire any seniority rights until they have completed the probationary period of thirty (30) days after which their seniority shall date back to the date the employee started work. When two or more employees start work the same day, the date of birth shall determine their relative seniority.

An employee's seniority shall be terminated if he: (1) quits; (2) retires; (3) is discharged; (4) fails to report after a layoff within seven (7) calendar days after the Employer sends to the last address known to the Employer a written notification to return to work (with a copy to the Union); (5) refuses, as an alternative to being laid off, to accept work in his classification in another store within the collective bargaining area; (6) refuses, after having been laid off, to accept work in his job classification in

any store in the collective bargaining area; or (7) has been laid off by the Employer for a period of one year; provided that at the end of the sixth month and at the end of each month thereafter, the laid off employee, in order to retain his recall rights, must notify, in writing, the Employer of his desire to be retained on recall status.

The "in-service" date of an employee who progresses from Apprentice to Journeyman, or who is demoted from Head Meat Cutter to Journeyman shall not be affected by such change in classification.

**SECTION 11.3—*Layoffs and Recalls After Layoffs.*** Where the employee's qualifications to perform the work available are equal, including in the case of head meat cutters the ability to organize and direct the work of others, seniority shall control the order of layoffs and recalls after layoffs of full-time employees on an individual store basis within the following job classifications, head meat cutters, journeymen, apprentices and wrappers (where covered by the Union agreement); provided that in the event the Employer closes a market or meat department, he shall transfer all employees with five years or more continuous full-time service to other markets or meat departments determined by the Employer, provided such transfers are consistent with the needs of the business.

Any employee transferred from an existing store to another store shall, if subject to a layoff within a period of ninety (90) days



after the transfer, have the right to return to the store from which he was transferred and assume the job that his seniority warrants.

IN WITNESS WHEREOF, the authorized representatives of the parties set their

hands this \_\_\_\_\_ day of \_\_\_\_\_, 1963.

LOCAL 546, AMALGAMATED MEAT CUTTERS AND  
BUTCHER WORKMEN OF NORTH AMERICA,  
AFL-CIO

By \_\_\_\_\_  
*President*

By \_\_\_\_\_  
*Secretary-Treasurer*

Employer \_\_\_\_\_

By \_\_\_\_\_

Employer's Address \_\_\_\_\_  
\_\_\_\_\_

JEWEL TEA CO., INC.

DOCKETED

FOOD STORES AND HOME SERVICE ROUTES  
1955 WEST NORTH AVENUE MELROSE PARK, ILLINOIS

580145  
FILED

AUSTIN 7-8600  
FILLMORE 5-0500

EXECUTIVE OFFICES

MAY 28 1963

November 13, 1961

AT O'CLOCK  
ELDER: A. WAGNER, JR.  
CLERK

Mr. R. Emmett Kelly, Chairman  
Affiliated Local Unions Negotiating Committee  
Locals 189, 262, 320, 546, 547, 571 and 638  
130 North Wells Street  
Chicago, Illinois

Dear Mr. Kelly:

During the course of the 1961 negotiations you have stated that if the entire industry were to make an offer which restricted the hours for the sale of meats to one, two or three nights a week, such an offer would be considered a conspiracy in restraint of trade and would, therefore, not be acceptable to the Affiliated Local Unions. You further stated that in order for the Affiliated Local Unions to entertain any offer for night operations, it must be an offer which would provide for the sale of meats on a 24-hour day, 7-day-a-week basis--in other words, which would provide for no restrictions on the days or hours when meat may be sold.

Since Jewel does not want to be party to a conspiracy to restrain trade and since it is also desirous of removing all restrictions on the hours at which meats may be sold, Jewel makes the following offers on behalf of itself and any other employer who desires to join in the offers.

Jewel Offer No. 1 - Self-Service Markets Only

During these negotiations, and also the negotiations for the last several years, you have consistently maintained that neither our meat cutters, nor those of any other employer want to work after 6:00 P.M. Our first offer is designed to accede to the stated wishes of your membership in this respect in that no employees will be required to work on Sundays or after 6:00 P.M., Mondays through Saturdays, inclusive. Since it is not possible to operate a service

[fol. 20]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
PLAINTIFF'S EXHIBIT 10

MAY 28 1963

November 13, 1961

AT \_\_\_\_\_ O'CLOCK  
ELBERT A. WAGNER, JR.  
CLERK

Mr. R. Emmett Kelly, Chairman  
Affiliated Local Unions Negotiating Committee  
Locals 189, 262, 320, 546, 547, 571 and 638  
130 North Wells Street  
Chicago, Illinois

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Jewel Offer No. 1 - Self-Service Markets Only

During these negotiations, and also the negotiations for the last several years, you have consistently maintained that neither our meat cutters, nor those of any other employer want to work after 6:00 P.M. Our first offer is designed to accede to the stated wishes of your membership in this respect in that no employees will be required to work on Sundays or after 6:00 P.M., Mondays through Saturdays, inclusive. Since it is not possible to operate a service market without employees on duty, this limitation on the hours which employees may be required to work necessarily limits our offer to self-service markets.

[fol. 20]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

PLAINTIFF'S EXHIBIT 10

Jewel offers to enter into a contract covering its self-service markets which will provide the same wages, health and welfare, vacations and all other terms of employment as those agreed upon between the Affiliated Locals and the industry, except as follows:

1. All restrictions on the hours at which meats and meat products may be sold shall be removed from the contract.
2. No employees other than the members of the Meat Cutters Union may stock or rotate the meats in self-service cases.
3. No employees may be required to work on Sundays or after 6:00 P.M., Mondays through Saturdays, inclusive, except that reasonable overtime may be required outside of such hours if the market or meat department is not open for the sale of meat.

#### Jewel Offer No. 2 - Self-Service and Service Markets

In the belief that adequate remuneration for work after 6:00 P.M. may offset the desire of your membership not to work after 6:00 P.M., Jewel offers to enter into a contract applicable to both service and self-service markets which will provide the same wages, health and welfare, vacations and other contract provisions as those agreed upon between the industry and the Union's negotiating committee, except as follows:

1. All restrictions on the hours at which meats and meat products may be sold shall be removed from the contract.
2. No employees other than the members of the Meat Cutters Union may stock or rotate the meats in self-service cases.
3. All work in excess of 8 hours in any one day, or after 6:00 P.M. on Mondays through Saturdays, inclusive, or on Sundays, shall be paid for at time and one-half.
4. A journeyman must be on duty during all hours that fresh meat is offered for sale between the hours of 9:00 A.M. and 9:00 P.M. on Mondays, Thursdays and

[fol. 21]

Jewel offers to enter into a contract covering its self-service markets which will provide the same wages, health and welfare, vacations and all other terms of employment as those agreed upon between the Affiliated Locals and the industry, except as follows:

1. All restrictions on the hours at which meats and meat products may be sold shall be removed from the contract.
2. No employees other than the members of the Meat Cutters Union may stock or rotate the meats in self-service cases.
3. No employee may be required to work on Sundays or after 6:00 P.M., Mondays through Saturdays, inclusive, except that reasonable overtime may be required outside of such hours if the market or meat department is not open for the sale of meat.

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1. All restrictions on the hours at which meats and meat products may be sold shall be removed from the contract.
2. No employees other than the members of the Meat Cutters Union may stock or rotate the meats in self-service cases.
3. All work in excess of 8 hours in any one day, or after 6:00 P.M. on Mondays through Saturdays, inclusive, or on Sundays, shall be paid for at time and one-half.
4. A journeyman must be on duty during all hours that fresh meat is offered for sale between the hours of 9:00 A.M. and 9:00 P.M. on Mondays, Thursdays and



Fridays, and between the hours of 9:00 A.M. and 6:00 P.M. on Tuesdays, Wednesdays and Saturdays. If the needs of our business require that an employee be on duty after 6:00 P.M. on Tuesdays, Wednesdays or Saturdays, or at any time on Sundays, the first employee called to work during such hours must be a Journeyman Meat Cutter. If a journeyman is on duty, additional employees on duty at the same time may be apprentices or male meat clerks.

We shall, of course, endeavor to rotate any work required after 6:00 P.M. and on Sundays among qualified journeymen.

5. The workday for any employee scheduled to work after 6:00 P.M. shall be so fixed as not to require him to put in more than 8 hours on the job. Thus, an employee who would be expected to work to 9:00 P.M. with one hour off for supper would be scheduled to start work beginning at 12:00 noon.

An earlier starting time for an employee required to work at nights might be agreed upon, but we have not offered it in the belief that you would not want to require by union contract a longer workday than 8 hours.

We wish to point out in making Jewel Offer No. 2 that we are offering to provide substantially the same working conditions and premium pay as those now enjoyed by our Joliet and Gary-Hammond meat cutters. The half-time premium pay involved in paying time and one-half for work after 6:00 P.M. will provide our meat cutters with substantially more premium pay than that enjoyed by employees on night shifts (the normal range is from ten to twenty cents per hour) and more than the retail clerks who will be working alongside of the meat cutters, none of whom now receive premium pay except in the event they perform night stocking work or work more than one night a week, the premium for such night work ranging from ten to twenty-five cents per hour.

Jewel is willing to enter into a contract embodying the terms of either of the above offers, which between them offer a choice of no night work or night work at premium pay.

Very truly yours,



Fridays, and between the hours of 9:00 A.M. and 6:00 P.M. on Tuesdays, Wednesdays and Saturdays. If the needs of our business require that an employee be on duty after 6:00 P.M. on Tuesdays, Wednesdays or Saturdays, or at any time on Sundays, the first employee called to work during such hours must be a Journeyman Meat Cutter. If a journeyman is on duty, additional employees on duty at the same time may be apprentices or male meat clerks.

We shall, of course, endeavor to rotate any work required after 6:00 P.M. and on Sundays among qualified journeymen.

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Jewel is willing to enter into a contract embodying the terms of either of the above offers, which between them offer a choice of no night work or night work at premium pay.

Very truly yours,

E. T. Vorbeck  
Assistant Secretary

ETV/bw

[fol. 22]

Suite 1606

CHICAGO 6, ILLINOIS

130 NORTH WELLS STREET

AMALGAMATED MEAT CUTTER LOCAL UNIONS  
No's 189, 262, 320, 350, 546, 547, 571, 612 and 638

THIS SIDE OF CARD IS FOR ADDRESS



October 4, 1962

DEAR JEWEL MEMBER:

You may have received a visit from one or more of your supervisors, asking you to sign a statement that you do not object to working nights. In some rare cases you may have signed it—even though in Joliet, Illinois, where night work --evails, two entire meat departments refused to sign.

In view of the voice vote which Jewel employees took recently opposing night work, we want your vote indicated on the attached card, so that we will have an expression of your opinion without any supervisor "looking over your shoulder."

Please return the attached post card without delay.

Fraternally yours,

MEAT CUTTER LOCAL UNIONS  
No's 189, 262, 320, 350, 546,  
547, 571, 612 and 638.

[fol. 23]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

PLAINTIFF'S EXHIBIT 11, 11A



THIS SIDE OF CARD IS FOR ADDRESS

I am opposed to working nights.

☐

I am in favor of working nights.

☐

Name \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_

You have our assurance that your choice will be held STRICTLY  
CONFIDENTIAL.

A. M. C. &amp; B. W. OF N. A.

TO THE CUSTOMERS OF THE JEWEL FOOD STORES AT

86

6 N. Avenue  
North Lake, Illinois  
6

GRO.

(Store Stamp)

Jewel is anxious to determine whether the customers of each of our stores need to be able to buy fresh meats at night and, if so, the number of nights of service required to satisfy those needs. Therefore, we are asking our customers to express their opinions as to the need for additional hours during which fresh meat might be bought and their preferences as to the night or nights on which such service should be supplied. Since the needs of different communities vary, it is necessary that we secure such opinions on a store by store basis.

Your co-operation in completing the questionnaire below and delivering it to any Jewel checker before January 25, 1958, will be greatly appreciated.

JEWEL FOOD STORES

DOCKETED

TO: JEWEL FOOD STORES

- (1) Would it be helpful to you to be able to buy fresh meats from this Jewel Food Store at night?

(X) YES

( ) NO

- (2) If your answer to the first question is "yes", please indicate below the number of nights of service which you believe are needed and your preference as to nights.

NUMBER OF NIGHTS

- ( ) One  
(X) Two  
( ) Three  
( ) Four  
( ) Five  
( ) Six

(CIRCLE) NIGHT OR NIGHTS PREFERRED

MON - TUES - WED - THURS - FRI - SAT

MON (TUES) WED (THURS) FRI SAT

MON TUES WED THURS FRI SAT

MON TUES WED THURS FRI SAT

MON TUES WED THURS FRI SAT

MONDAY THROUGH SATURDAY, INCLUSIVE

58C145

FILED

Signed:

Mrs. R. A. Riv

[fol. 24]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

PLAINTIFF'S EXHIBIT 12

Service required to satisfy these needs. Therefore, we are asking our customers to express their opinions as to the need for additional hours during which fresh meat might be bought and their preferences as to the night or nights on which such service should be supplied. Since the needs of different communities vary, it is necessary that we secure such opinions on a store by store basis.

Your co-operation in completing the questionnaire below and delivering it to any Jewel checker before January 25, 1958, will be greatly appreciated.

JEWEL FOOD STORES

# DOCKETED

TO: JEWEL FOOD STORES

- (1) Would it be helpful to you to be able to buy fresh meats from this Jewel Food Store at night?

(X) YES

( ) NO

- (2) If your answer to the first question is "yes", please indicate below the number of nights of service which you believe are needed and your preference as to nights.

## NUMBER OF NIGHTS

- ( ) One  
 (X) Two  
 ( ) Three  
 ( ) Four  
 ( ) Five  
 ( ) Six

## CIRCLE NIGHT OR NIGHTS PREFERRED

MON - TUES - WED - THURS - FRI - SAT

MON (TUES) WED (THURS) FRI SAT

MON TUES WED THURS FRI SAT

MON TUES WED THURS FRI SAT

MON TUES WED THURS FRI SAT

MONDAY THROUGH SATURDAY, INCLUSIVE

58C1415

FILED

MAY 28 1953

AT 10 O'CLOCK  
 ELBERT A. WAGNER, JR.  
 CLERK

Signed:

*Mrs. R. A. Rix*

Address:

*41 E. Armitage Ave  
 North Lake, Ill*

[fol. 24]

IN UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF ILLINOIS

PLAINTIFF'S EXHIBIT 12



MASTER TABULATION

TO: F. A. WERTHEIN  
1955 W. North Avenue  
Melrose Park, Illinois

PIF Ex 12-E

*Copy to  
Jury  
1/19/78*

TABULATING FORM

TOTAL SENT OUT 100,000

1.	Total number of questionnaires returned	18,775	100.0%
	Number of YES responses	16,747	89.2
	Number of NO responses	2,028	10.8
2.	A. Number preferring one night for sale of meat	6,848	36.5
	B. Night	M T W TH F S	
	Number requests	207 172 234 1,014 5,235 34	
		1.1 .9 1.2 5.4 27.8 .1	
3.	A. Number preferring two nights for sale of meat	6,896	36.7
	B. Night	M T W TH F S	
	Number requests	772 910 517 1,724 2,876 976	
		4.1 4.8 2.8 9.2 15.3 .5	
4.	A. Number preferring three nights for sale of meat	1,734	9.2
	B. Night	M T W TH F S	
	Number requests	378 134 343 298 531 50	
		2.0 .7 1.8 1.6 2.8 .3	
5.	A. Number preferring four nights for sale of meat	149	.8
	B. Night	M T W TH F S	
	Number requests	22 32 25 34 27 9	
		.1 .2 .1 .2 .2	
6.	A. Number preferring five nights for sale of meat	482	2.6
	B. Night	M T W TH F S	
	Number requests	22 22 23 22 109 4	
		.5 .5 .5 .5 .6	
7.	A. Number preferring six nights for sale of meat	638	3.4
			89.2

(Store Stamp)

58C145  
FILED

PLAINTIFF'S EXH.

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

[fol. 25]



Number of YES responses

16,747

89.2

Number of NO responses

2,028

10.8

2. A. Number preferring one night for sale of meat

6,848

36.5

B. Night

Number requests

M	T	W	TH	F	S
207	172	234	1,011	5,235	34
1.1	.9	1.2	5.4	27.8	.1

3. A. Number preferring two nights for sale of meat

6,896

36.7

B. Night

Number requests

M	T	W	TH	F	S
772	910	517	1,724	2,876	97
4.1	4.8	2.8	9.2	15.3	.5

4. A. Number preferring three nights for sale of meat

1,734

9.2

B. Night

Number requests

M	T	W	TH	F	S
278	134	213	298	531	50
2.0	.7	1.8	1.6	2.8	.3

5. A. Number preferring four nights for sale of meat

149

.8

B. Night

Number requests

M	T	W	TH	F	S
22	32	25	34	27	9
.1	.2	.1	.2	.2	

6. A. Number preferring five nights for sale of meat

482

2.6

B. Night

Number requests

M	T	W	TH	F	S
92	92	93	92	109	4
.5	.5	.5	.5	.6	

7. A. Number preferring six nights for sale of meat

638

3.4

89.2

(Store Stamp)

58C145

FILED

MAY 28 1963

AT O'CLOCK  
ELBERT A. WAGNER, JR.  
CLERK

DOCKETED

PLAINTIFF'S EXHIBIT 12E

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

[fol. 25]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

PLAINTIFF'S EXHIBIT 13

# COMPARISON WEEKLY SALES PAYROLL & EARNINGS - FOR 9 STORES VS. COMPANY AVERAGE

## BEFORE AND AFTER NIGHT HOUR SALE OF MEAT

DOCKETED

58C1415

FILED

MAY 28 1963

AT 10 O'CLOCK  
CLERK A. WAGNER, JR.

	Average 9 Stores Per Week Per Store		% Increase From Base	Company Increase for Comparable Periods
	Before(1)	After(2)		
Meat Sales	\$9,667	\$11,505	19.0	6.8
Total Sales	31,381	\$36,618	16.7	4.9
% Meat Sales & Total Sales	30.8	31.4	.6	.5
Meat Payroll \$	\$759	\$935	23.2	9.1
% Meat Payroll to Meat Sales	7.9	8.2	.3	.2
Total Store Payroll	\$2,059	\$2,461	19.5	7.9
% Total Store Payroll to Total Sales	6.6	6.8	.2	.2
Total Store Earnings	\$1,315	\$1,618	23.1	7.7

(1) Base Period (one year's results)

(2) One year results after expansion of Meat Sales in P. M.



[fol. 27]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

Loss of Profits Because Level Unable  
Sell Meat at Night Except in 33 stores. PLAINTIFF'S EXHIBIT 16

Line	Business	1953 Jan 1 - Dec 31	1954	1955	1956	1957	1958	1959	1960	1961	1962 Jan 1 - Dec 31	TOTAL EARNINGS 1953-1962
X 15	Aurora											131,550
23	Midvale											227,200
30	Crystal Lake											1,297,210
41	Kendall											(147,460)
341	Joliet											637,800
X 362	Elmhurst											312,316
426	Waukegan											179,977
499	Union Lake											(79,777)
X 515	Kenosha											5,672,251
661	Madison											(37,661)
902	Aurora											263,000
X 950	Aurora											83,320
1083	Chicago											(3,350)
1161	Joliet											976,933
1253	Rockford											(163,723)
1320	McKillop											(80,535)
1423	Kenosha											(1,326)
1533	St. Charles											(3,016)
1765	Whiting											210,476
2466	Chicago											(20,360)
2601	Washington											191,374
3214	Rockford											(129,912)
3510	Rockford											(52,772)
3718	Rockford											111,402
4501	Rockford											(77,490)
4523	Rockford											362,207
4569	Rockford											358,488
6218	Rockford											81,374
6311	Rockford											(72,172)
8933	Hammond											(47,466)
9242	Hammond											259,351
9411	Highland											2,217
H.C. (Ill. meat)												87,227
Total earnings of Plaintiff's stores		13,198	65,727	357,771	525,907	645,607	1,007,202	761,215	676,777	719,508	468,038	5,841,740
Total Company earnings		2,574,912	6,326,872	8,307,727	11,627,027	10,607,072	14,127,300	17,009,349	17,566,416	17,741,707	19,235,353	116,182,792
Total amount received by Plaintiff's stores		2,581,714	6,331,444	8,310,727	11,631,444	10,610,444	14,131,444	17,012,444	17,570,444	17,744,444	19,238,444	116,185,444

Damages to Plaintiff by not be  
allowed to sell meat at night = \$40,940,352 @ 15.4% = \$17,084,514

① The 15.4% RO was obtained from Record of findings from  
9 stores only

MARKET FACTS, INC.

Pif. Ex 17, ed.

SURVEY OF CHICAGO AREA HOMEMAKER'S  
OPINIONS CONCERNING FRESH MEAT  
PURCHASING AFTER 6:00 P.M.

53C1965

FILED

Summary Report

MAY 28 1963

AT 10 O'CLOCK  
ELBERT A. WAGNER, JR.  
CLERK

DOCKETED

[fol. 28]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
PLAINTIFF'S EXHIBIT 17

A Study Conducted By:

Market Facts, Incorporated  
100 South Wacker Drive  
Chicago 6, Illinois

## SPECIFICATIONS OF STUDY

Objective:

To establish among telephone-owning, Chicago area homemakers the level of awareness of, and attitudes toward, the rule which prohibits the sale of fresh meat after 6:00 P. M.

Sample Size:

422

Type of Sample:

Random selection from Chicago and suburban telephone directories. Approximately half of the interviews were conducted within Chicago and the remainder in suburban communities within twenty miles of Chicago.

Qualified Respondent:

Any female head-of-household.

Time and Dates of Interviewing:

Evenings and daytime interviewing on Monday and Tuesday, October 22 and 23, 1962.

Interviewing Staff:

Experienced telephone interviewers who were recruited, trained and supervised by Market Facts, Inc.

Design, Preparation and Execution of Survey:

All aspects of the study design, planning and implementation of the field work, and the processing and tabulation of questionnaires were carried out exclusively by Market Facts, Inc.

[fol. 29]



## SUMMARY OF KEY FINDINGS

<u>Item</u>	<u>Proportion in Sample</u>	<u>* Probable Minimum and Maximum Proportion in Population</u>	<u>**Projected to 1,280,400 Telephone-Owning Cook County Households</u>
	(%)	(%)	(Number of Households)
Normally use auto- mobile for shopping	66	60-72	744,240- 893,088
Cannot drive or car is not normally available on weekdays	56	50-62	620,200- 769,048
Aware that it is im- possible to buy fresh meat after 6:00 P.M.	95	92-98	1,141,168-1,215,592
Prefer to do some or all of their regular food shopping in the evening	36	30-42	372,120- 520,968
Said the 6:00 P.M. rule concerning fresh meat causes them inconveni- ence or problems	34	28-40	347,312- 496,160
Have had experience where an unsatisfactory substitute had to be served to family	19	14-24	173,656- 297,696
Would favor change in 6:00 P.M. rule so that fresh meat could be purchased	89	85-93	1,054,340-1,153,572

Would favor this



<u>Item</u>	<u>Proportion in Sample</u>	<u>Proportion in Population</u>	<u>Telephone-Owning Cook County Households</u>
	(%)	(%)	(Number of Households)
Normally use auto- mobile for shopping	66	60-72	744,240- 893,088
Cannot drive or car is not normally available on weekdays	56	50-62	620,200- 769,048
Aware that it is im- possible to buy fresh meat after 6:00 P.M.	95	92-98	1,141,168-1,215,592
Prefer to do some or all of their regular food shopping in the evening	36	30-42	372,120- 520,968
Said the 6:00 P.M. rule concerning fresh meat causes them inconveni- ence or problems	34	28-40	347,312- 496,160
Have had experience where an unsatisfactory substitute had to be served to family	19	14-24	173,656- 297,696
Would favor change in 6:00 P.M. rule so that fresh meat could be purchased	<u>89</u>	<u>85-93</u>	1,054,340-1,153,572
Would favor this strongly	52	46-57	570,584- 707,028

[fol. 30]

\* Based on two standard errors (i. e. 95% level of confidence)

\*\* Source of population data: U.S. Census, Department of Commerce. Base figure of 1,280,400 represents 80% (telephone ownership in Chicago area) of total Cook County households, 1,600,499.

MARKET FACTS, INC.  
39 SO. LA SALLE ST.  
CHICAGO 3, ILL.

TABLE NO. 2  
QU. NO. 2a, b

PERCENTAGE BY:

TYPED BY:

CHECKED BY:

DB No. 2-2901

ABILITY TO DRIVE AND AVAILABILITY OF AUTOMOBILE

Said They:		This Percent of the Respondents Who Are:									
		Employed				Not Employed				Total Sample	
		No.	%	No.	%	No.	%	No.	%	No.	%
Can drive	1	58	55			184	58			242	57
Car is normally available during weekdays:											
1 day	1	1	1			20	6			21	5
2 days		3	3			7	2			10	2
3 days		4	4			10	3			14	3
4 days	11	-	-			5	2			5	1
5 days		36	34			103	33			139	33
None	0	14	13			39	12			55	13
Cannot drive	142	48	45			132	42			180	43
(Number of Respondents)		(106) 100				(316) 100				(422) 100	

Said They:	Employed 1				Employed 2				Sample		
	No.	%	No.	%	No.	%	No.	%	No.	%	
Can drive	1	<u>58</u>	<u>55</u>			<u>114</u>	<u>58</u>			<u>242</u>	<u>57</u>
Car is normally available during weekdays:											
1 day	1	1	1			20	6			21	5
2 days		3	3			7	2			10	2
3 days		4	4			10	3			14	3
4 days		-	-			5	2			5	1
5 days		36	34			103	33			139	33
None	0	14	13			39	12			55	13
Cannot drive	147	<u>48</u>	<u>45</u>			<u>132</u>	<u>42</u>			<u>180</u>	<u>43</u>
(Number of Respondents)		(106)	100			(316)	100			(422)	100



## CHICAGO METROPOLITAN AREA LABOR FORCE

(Standard Metropolitan Statistical Area:

Cook, Du Page, Kane, Lake, McHenry, and Will Counties, Illinois)

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

PLAINTIFF'S EXHIBIT 18C

## 1960 CIVILIAN LABOR FORCE (over 14 years)

Male	1,729,000
Female	<u>896,000</u>
Total	2,625,000

Married Women in Labor Force (Husbands Present)	456,000
--	---------

77% of Husbands Who Work (Excludes students, physically handicapped, etc.)	<u>351,000</u>
--	----------------

H. & W. in Families Where Both Husband & Wife Work	807,000
---	---------

Source: U.S. Census of Population, 1960 (Illinois), General Social and  
Economic Characteristics.  
Final Report PC(1)-15C. U.S. Govt. Printing Office.

(All figures rounded to nearest thousand)

DOCKETED  
FILED

MAY 28 1963

5801415

AT \_\_\_\_\_ O'CLOCK  
ELBERT A. WAGNER, JR.  
CLERKEX 18C  
EX 18C

FILED DOCKETED

540145

815 Ex 19, A

MAY 28 1963

JEWEL FOOD STORES - 1957

Estimated Costs That Would Be Incurred If All Jewel Stores Were Closed in Late 1957

AT O'CLOCK Estimates Based on Company Performance During Last 8 Weeks, 1957)  
ELBERT A. WAGNER, JR.  
CLERK

<u>Length of Strike</u>	<u>Loss of Sales *</u>	<u>Continuing Expenses</u>	<u>Loss of Earnings **</u>	<u>Accumulative Continuing Expenses</u>	<u>Loss of Earnings</u>	<u>Total</u>
1st day	\$943,900	\$ 33,700	\$14,200	\$ 33,700	\$ 14,200	\$ 47,900
2nd day	943,900	33,700	14,200	67,400	28,400	95,800
3rd day	943,900	33,700	14,200	101,100	42,600	143,700
4th day	943,900	33,700	14,200	134,800	56,800	191,600
5th day	943,900	33,700	14,300	168,500	71,100	239,600
6th day	944,000	33,700	14,300	202,200	85,400	287,600
<hr/>						
2nd week	5,663,500	202,200	85,400	404,400	170,800	575,200
3rd week	5,663,500	202,200	85,400	606,600	256,200	862,800
4th week	5,663,500	202,200	85,400	808,800	341,600	1,150,400
5th week	5,663,500	202,200	85,400	1,011,000	427,000	1,438,000
6th week	5,663,500	202,200	85,400	1,213,200	512,400	1,725,600
7th week	5,663,500	202,200	85,400	1,415,400	597,800	2,013,200
8th week	5,663,500	202,200	85,400	1,617,600	683,200	2,300,800

Other Losses

- (1) An estimated \$1,006,000 of perishable products (dairy, produce, delicatessen & meats) would be found in all stores at the end of a typical day in 1957. It is difficult to estimate the losses that would be incurred to these products because of differences in product perishability and the possibility of selling out some of these products in the event of a strike.

[fol. 33]

IN UNITED STATES COURT FOR THE NORTH DISTRICT OF CALIFORNIA  
PLAINTIFF  
vs.  
DEFENDANT

3rd day	943,900	33,700	14,200	101,100	42,600	143,700
4th day	943,900	33,700	14,200	134,800	56,800	191,600
5th day	943,900	33,700	14,300	168,500	71,100	239,600
6th day	944,000	33,700	14,300	202,200	85,400	287,600
<hr/>						
2nd week	5,663,500	202,200	85,400	404,400	170,800	575,200
3rd week	5,663,500	202,200	85,400	606,600	256,200	862,800
4th week	5,663,500	202,200	85,400	808,800	341,600	1,150,400
5th week	5,663,500	202,200	85,400	1,011,000	427,000	1,438,000
6th week	5,663,500	202,200	85,400	1,213,200	512,400	1,725,600
7th week	5,663,500	202,200	85,400	1,415,400	597,800	2,013,200
8th week	5,663,500	202,200	85,400	1,617,600	683,200	2,300,800

#### Other Losses

- (1) An estimated \$1,006,000 of perishable products (dairy, produce, delicatessen & meats) would be found in all stores at the end of a typical day in 1957. It is difficult to estimate the losses that would be incurred to these products because of differences in product perishability and the possibility of selling out some of these products in the event of a strike.

\* Sales losses are based on the average volume for the last 8 weeks of 1957.

\*\* Expenses & Earnings are based on the average volume for the last 8 weeks of 1957.

"Continuing Expenses" are irreducible custodial expenses, lease charges, etc. and are predicated upon assumption company could immediately get upon such a basis. To the extent, or for any period, it could not do so, "expenses" would measurably be increased.

[fol. 33]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

PLAINTIFF'S EXHIBIT 19



B14 Ex 22, id

INTER-OFFICE MEMORANDUM

DOCKETED

To: (check)

- ☐ Barnington  
☐ 3617 Ashland Ave.  
☐ Melrose Park

Personnel File of Walter Santeler

TO 3510 - 3214, Rockford

FROM

C. A. Cantrell

UNIT OR BRANCH

DATE April 9, 1959

58C1415

Subject: MANAGEMENT OF 3510 ROCKFORD

FILED

MAY 28 1963

On two different occasions I have had to take considerable "out of code" product out of Wally Santelers cases. On the first occasion approximately two shopping carts full of product was removed from sale. AT 10 O'CLOCK  
ELBERT A. WAGNER, JR.  
CLERK

Recently it was rumored that Santeler was purchasing additional Beef Hearts and Beef Tongues to grind in with his Beef Trimmings for Ground Beef. Mr. Grewe questioned Santeler, Wednesday morning April 8, at the new 3214 Rockford store opening as to whether these rumors were true and he admitted that he had been doing this, but assured Mr. Grewe that he would not do it again. It was carefully explained to Santeler that his meat grinder is not a "Disposal".

Santeler is fully aware of Jewel's Policies of CORRECT WEIGHTS, CORRECT CODES, THE CORRECT METHOD OF GRINDING and FORMULAS OF GROUND BEEF AND GROUND ROUND STEAK, and FRESHNESS CONTROL and agrees to abide by these policies in the future. He is also aware that if there is any deviation from Jewel's policies that he is subject to immediate dismissal from the company. This of course includes working his personnel overtime and failing to pay them for their overtime.

District 1, 3510 Rockford's District, had an increase in sales of 1.01 % the 3rd Period over the 2nd Period, while 3510 had a 9.24% loss in Sales. Failure to give our Customers Jewel Quality and Freshness at all times can't help but cause a loss in Sales.

3510 ROCKFORD

\$5939 2nd Per.  
5489 3rd Per.  
\$ 450 (Loss 9.24%)

DISTRICT 1

\$8087 2nd Per.  
8193 3rd Per.  
\$ 106 Gain 1.01%

*C. A. Cantrell*

C. A. Cantrell, Central Div.  
Market Operating Manager.

I have read the above and agree that

[fol. 34]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
PLAINTIFF'S EXHIBIT 22

MAY 28 1963

On two different occasions I have had to take considerable "out of code" product out of Wally Santelers cases. On the first occasion at 11 O'CLOCK approximately two shopping carts full of product was removed from ELBERT A. WAGNER, JR. sale. CLERK

Recently it was rumored that Santeler was purchasing additional Beef Hearts and Beef Tongues to grind in with his Beef Trimmings for Ground Beef. Mr. Grewe questioned Santeler, Wednesday morning April 8, at the new 3214 Rockford store opening as to whether these rumors were true and he admitted that he had been doing this, but assured Mr. Grewe that he would not do it again. It was carefully explained to Santeler that his meat grinder is not a "Disposal".

Santeler is fully aware of Jewel's Policies of CORRECT WEIGHTS, CORRECT CODES, THE CORRECT METHOD OF GRINDING and FORMULAS OF GROUND BEEF AND GROUND ROUND STEAK, and FRESHNESS CONTROL and agrees to abide by these policies in the future. He is also aware that if there is any deviation from Jewel's policies that he is subject to immediate dismissal from the company. This of course includes working his personnel overtime and failing to pay them for their overtime.

District 1, 3510 Rockford's District, had an increase in sales of 1.01 % the 3rd Period over the 2nd Period, while 3510 had a 9.24% loss in Sales. Failure to give our Customers Jewel Quality and Freshness at all times can't help but cause a loss in Sales.

3510 ROCKFORD

\$5939 2nd Per.  
5489 3rd Per.  
 \$ 450 (Loss 9.24%)

DISTRICT 1

\$8087 2nd Per.  
8193 3rd Per.  
 \$ 106 Gain 1.01%

C. A. Cantrell  
 C. A. Cantrell, Central Div.  
 Market Operating Manager.

I have read the above and agree that these statements are true and that in the future I will operate my Market according to Company Policies

Signed

Walter Santeler

CC: Mr. N. J. Grewe

Jewel Tea Co., Inc.

A BETTER PLACE TO TRADE - A BETTER PLACE TO WORK

FORM M-221

1-55

[fol. 34]  
 IN UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF ILLINOIS  
 PLAINTIFF'S EXHIBIT 22

**DOCKETED**  
**STIPULATION**

[fol. 35]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANTS' EXHIBIT 8

THE PARTIES STIPULATE, subject to objection of Plaintiff as to relevancy and materiality, that within the Chicago area, comprised of Cook, Lake, Kane, DuPage and McHenry Counties, Illinois, within which collective bargaining agreements with the Defendant Local Unions (including only Group 1 of Local Union No. 189) provide that market operating hours of meat markets shall be from 9:00 A. M. to 6:00 P. M., Monday through Saturday, the following named employers, as of the dates shown, operated the designated number of service and self-service meat markets and employed the designated number of head meat cutters, journeymen and apprentices in these markets:

Employer	As Of	Self-Service Markets	Employees	Service Markets	Employees	As Of	Self-Service Markets	Employees	Service Markets	Employees
National Tea Co.	9/21/57	115	*	121	*	1/2/62	162	766	22	45
Great Atlantic & Pacific Tea Co.	9/2/57	90	**	54	***	1/2/62	117	570	28	73
High-Low Foods, Inc.	9/2/57	11	100	27	116	1/2/62	26	230	27	116
Wieboldt Stores, Inc.	10/12/57	2	14	5	35	1/6/62	5	35	2	12
Eagle Food Centers, Inc. (including Eagle and Pig Wiggly Stores)	9/2/57	1	8	0	0	1/2/62	13	42	0	0
Sure Save Food Markets	9/2/58	4	22	2	4	1/2/62	9	47	1	3
Fair Store	9/2/57	0	0	1	4	1/2/62	0	0	1	2
The Kroger Co.	9/2/57	39	169	28	60	1/2/62	45	203	2	6
Jewel Tea Co.	12/28/57	157	1192	25	86	12/20/61	206	1318	15	50

\* 518 employees employed in both service & self-service markets without a breakdown between them.

\*\* 90 head meat cutters; figures not available for journeymen and apprentices.

\*\*\* 54 head meat cutters; figures not available for journeymen and apprentices.



# AMALGAMATED MEAT CUTTERS

30 NORTH WELLS STREET

FRANKLIN SQUARE

CHICAGO 8

AFFILIATED WITH THE  
AFL CIO  
ILLINOIS FEDERATION OF LABOR  
CHICAGO FEDERATION OF LABOR

W. EMMETT KELLY  
SECRETARY-TREASURER



July 22, 1957

Mr. E. E. Hargrave, Vice-Pres.  
Jewel Food Stores  
1955 W. North Avenue  
Melrose Park, Ill.

Dear Mr. Hargrave:

As you know, the existing Collective Bargaining Agreement between  
you, ... JEWEL FOOD STORES, ...  
and the AMALGAMATED MEAT CUTTERS' UNION expires on  
OCTOBER 5, 1957.

This is to inform you that it is our desire to open negotiations for  
a new Contract to cover wages, hours and various other conditions  
of employment.

In the event you have shops located within the jurisdiction of  
LOCALS 189, 262, 320, 546, 547, 571 and 638, you may consider this  
letter as notice of our desire to negotiate a new Contract on behalf of  
those Unions listed.

We shall be pleased to meet with you at any time mutually convenient  
for the purpose of negotiating the terms of a new Contract.

With very best wishes, I remain

Very truly yours,

Chairman, Affiliated  
Local Unions' Negotiating  
Committee, Locals 189,  
320, 546, 547, 571 and 638.

REK:h  
ccu 28

[fol. 36]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANTS' EXHIBIT 11

[fol. 37]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANTS' EXHIBIT 12

Re: Messrs. C. H. Brennan, Associated Food Dealers  
A. J. Ernst, A & P  
L. Carroll, Kroger  
R. H. Cobb, National Tea Co.  
Miss Genevieve Rooney - High-Low Foods

Def X 12  
ID

July 30, 1957

Mr. R. Emmett Kelly, Chairman  
Affiliated Local Unions' Negotiating Committee  
Amalgamated Meat Cutters  
190 North Wells Street  
Chicago 6, Illinois

Dear Mr. Kelly:

This will acknowledge receipt of your letter notifying us that the Affiliated Locals wish to reopen the contract for negotiations for a new agreement.

In order to expedite the negotiations as much as possible, I would like to suggest that you send the Unions' proposals to all employers and all employer associations normally represented in these negotiations, or, if that is not deemed feasible, that you call a meeting in the near future for the purpose of submitting your proposals.

Very truly yours,

E. T. Vorbeck  
General Attorney

ETV/ty

# AMALGAMATED MEAT CUTTERS

130 NORTH WELLS STREET

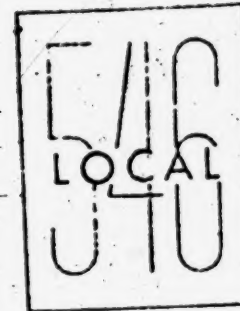
CHICAGO 6

CHICAGO 6

OFFICERED WITH THE  
AFL-CIO  
ILLINOIS FEDERATION OF LABOR  
CHICAGO BRANCH OF LABOR

R. EMMETT KELLY  
SECRETARY-TREASURER

August 8, 1957



*Mr. Korbels*  
Mr. E. E. Hargrave,  
Jewel Food Stores  
1955 N. North Avenue  
Melrose Park, Ill.

RECEIVED

AUG 12 1957

LAW DIVISION

Dear Mr. Hargrave:

There will be a meeting held on Tuesday, August 20 at 10:00 A. M. at 130 North Wells Street in Room 414 for the purpose of presenting Contract demands to all employers and at the same time offering explanation of such to those making inquiry.

With very best wishes, I remain

Yours very truly,

*R. Emmett Kelly*  
Secretary-Treasurer

REK:h  
oeiu 28

DEFENDANTS' EXHIBIT 13

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

[Vol. 38]



CONTRACT DEMANDS SUBMITTED BY THE AFFILIATED  
LOCAL UNION NEGOTIATING COMMITTEE AND COVERING MEAT  
CUTTER LOCALS NO. 189; 262, 320, 546, 547, 571 and 638.

- .....
1. A two (2) year agreement with wage increases as specified below for the first (1st) year and with a wage re-opener ONLY for the second (2nd) Year.
  2. Time and one-half (1-1/2) to be paid for all work in excess of Forty (40) Hours per week.
  3. There shall be two (2) Fifteen (15) Minute rest periods each day in all meat departments.
  4. Increase all JOURNEYMEN in both SERVICE AND SELF-SERVICE MARKETS to ONE HUNDRED TWELVE DOLLARS AND FIFTY CENTS ( \$112. 50) weekly.
  5. Increase all HEAD MEAT CUTTERS in both SERVICE AND SELF-SERVICE MARKETS to ONE HUNDRED NINETEEN DOLLARS ( \$119. 00) weekly.
  6. Increase all APPRENTICES in both SERVICE AND SELF-SERVICE MARKETS AS FOLLOWS:

FIRST YEAR.....	SEVENTY-TWO (\$72. 00) per week
SECOND YEAR.....	EIGHTY DOLLARS (\$80. 00) " "
THIRD YEAR.....	EIGHTY-EIGHT DOLLARS (\$88. 00) per week.

7. GROUPS THREE AND FOUR, ( 3 and 4) in LOCAL UNION NO. 189 to be incorporated into GROUP TWO (2).

DEPENDANTS' EXHIBIT 14  
IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

[fol. 39]

CUTTER LOCALS NO. 189, 262, 320, 546, 547, 571 and 638.

.....  
1. A two (2) year agreement with wage increases as specified below for the first (1st) year and with a wage re-opener ONLY for the second (2nd) Year.

2. Time and one-half (1-1/2) to be paid for all work in excess of Forty (40) Hours per week.

3. There shall be two (2) Fifteen (15) Minute rest periods each day in all meat departments.

4. Increase all JOURNEYMEN in both SERVICE AND SELF-SERVICE MARKETS to ONE HUNDRED TWELVE DOLLARS AND FIFTY CENTS ( \$112. 50) weekly.

5. Increase all HEAD MEAT CUTTERS in both SERVICE AND SELF-SERVICE MARKETS to ONE HUNDRED NINETEEN DOLLARS ( \$119. 00) weekly.

6. Increase all APPRENTICES in both SERVICE AND SELF-SERVICE MARKETS AS FOLLOWS:

FIRST YEAR.....	SEVENTY-TWO (\$72.00) per week
SECOND YEAR.....	EIGHTY DOLLARS (\$80.00) " "
THIRD YEAR.....	EIGHTY-EIGHT DOLLARS (\$88.00) per week.

7. GROUPS THREE AND FOUR ( 3 and 4) in LOCAL UNION NO. 189 to be incorporated into GROUP TWO (2).

[fol. 39]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEPENDANTS' EXHIBIT 14

8. Whenever an employee who has been employed Six (6) Months or longer leaves his present employment for any reason, he shall be entitled to PRO-RATED VACATION based on his months of service.

9. Increase the VACATION SCHEDULE to include three (3) weeks vacation for ten (10) years of Service.

10. Reinstate "VETERANS' DAY as a PAID HOLIDAY.

11. SERVICE MARKETS under the jurisdiction of Local 262 demand the same FORTY(40) HOUR WORK WEEK as presently in SELF-SERVICE MARKETS.

12. CONTRACT DEMANDS shall be subject to retroactivity at all times.

13. THE UNION shall have the right to supplement these demands at any time during the negotiations.

#### 14. SUCCESSIONS AND ASSIGNS CLAUSE

This Agreement shall be binding upon the Company herein, and its successors and assigns and no provision herein contained shall be nullified or affected in any manner as a result of any consolidation, sale, transfer, assignment, or any other disposition of the Company herein or by any change to any other form of business organization or by any change, geographical or otherwise, in the location of the Company herein. The Company agrees that it will not conclude any of the above transactions unless an agreement has been entered into as a result of which this Agreement shall continue to be binding on the person or persons or any business organization continuing the business. It is the intent

9. Increase the VACATION SCHEDULE to include three (3) weeks vacation for ten (10) years of Service.

10. Reinstate "VETERANS' DAY as a PAID HOLIDAY.

11. SERVICE MARKETS under the jurisdiction of Local 262 demand the same FORTY(40) HOUR WORK WEEK as presently in SELF-SERVICE MARKETS.

12. CONTRACT DEMANDS shall be subject to retroactivity at all times.

13. THE UNION shall have the right to supplement these demands at any time during the negotiations.

#### 14. SUCCESSIONS AND ASSIGNS CLAUSE

This Agreement shall be binding upon the Company herein, and its successors and assigns and, no provision herein contained shall be nullified or affected in any manner as a result of any consolidation, sale, transfer, assignment, or any other disposition of the Company herein or by any change to any other form of business organization or by any change, geographical or otherwise, in the location of the Company herein. The Company agrees that it will not conclude any of the above transactions unless an agreement has been entered into as a result of which this Agreement shall continue to be binding on the person or persons or any business organization continuing the business. It is the intent of the parties that this Agreement shall remain in effect for the full term hereof regardless of any change of any kind in management, location, form of business organization or ownership.

[fol. 40]



# JEWEL TEA CO., INC.

FOOD STORES AND HOME SERVICE ROUTES  
1995 WEST NORTH AVENUE MELROSE PARK, ILLINOIS

AUSTIN 7-6600  
FILLMORE 5-0500

LAW DIVISION

August 30, 1957

Mr. C. H. Brozann  
Associated Food Dealers of Greater Chicago, Inc.  
510 North Dearborn Street  
Chicago, Illinois

*Def X15  
ID*

Dear Carl:

I am enclosing a recently negotiated and executed contract with Local 350, covering all meat market personnel in Lake County, Indiana, and also our 1956-57 contract with Local 612 at Joliet, Illinois, because certain of these contract provisions will be of interest to you and your association members.

The two contracts are similar in that they provide employers with considerable more latitude in their market operations and working conditions than those provided by Local 546 and its affiliated locals. Thus, in Local 350 an employer may operate his market any hours that he chooses, including Sundays. You will note in this contract that the article governing market operating has been completely removed from the contract. The same is true in Local 612, except that the contract continues to prohibit Sunday operations. Lifting the restrictions on Sunday operations was sought actively only by independent operators in the Lake County, Indiana area, no chain either seeking or wanting this restriction removed.

The second change of significance is the permission granted by the Union to the employer to use a flexible workday; i.e., one which can be begun at any hour from 8:00 a.m. to 12:00 noon, provided only that it does not last beyond 9:00 p.m. This appears in Section 1 of Article 4 of the Local 350 contract, and in Paragraph (a) of Article III of the Local 612 contract.

Both contracts require us to pay time and one-half after 6:00 p.m., but since we are enabled to start the workday as late as 12:00 noon, this means that we can incorporate such overtime as part of the basic workweek, if we so desire. This also means that our expense for such overtime is increased merely by the half time extra rather than time and one-half. The two contracts differ in another respect. In the

[fol. 41]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINO

DEFENDANTS' EXHIBIT 15

August 30, 1957

Mr. C. H. Broxann  
Associated Food Dealers of Greater Chicago, Inc.  
510 North Dearborn Street  
Chicago, Illinois

Def X15  
ID

Dear Carl:

I am enclosing a recently negotiated and executed contract with Local 350, covering all meat market personnel in Lake County, Indiana, and also our 1956-57 contract with Local 612 at Joliet, Illinois, because certain of these contract provisions will be of interest to you and your association members.

The two contracts are similar in that they provide employers with considerable more latitude in their market operations and working conditions than those provided by Local 546 and its affiliated locals. Thus, in Local 350 an employer may operate his market any hours that he chooses, including Sundays. You will note in this contract that the article governing market operating has been completely removed from the contract. The same is true in Local 612, except that the contract continues to prohibit Sunday operations. Lifting the restrictions on Sunday operations was sought actively only by independent operators in the Lake County, Indiana area, no chain either seeking or wanting this restriction removed.

The second change of significance is the permission granted by the Union to the employer to use a flexible workday; i.e., one which can be begun at any hour from 8:00 a.m. to 12:00 noon, provided only that it does not last beyond 9:00 p.m. This appears in Section 1 of Article 4 of the Local 350 contract, and in Paragraph (a) of Article III of the Local 612 contract.

Both contracts require us to pay time and one-half after 6:00 p.m., but since we are enabled to start the workday as late as 12:00 noon, this means that we can incorporate such overtime as part of the basic workweek, if we so desire. This also means that our expense for such overtime is increased merely by the half time extra rather than time and a half. The two contracts differ in another respect. In the Local 612 contract, we pay time and a half for all hours worked in excess of 40, while the 350 contract continues the use of six day rates.

[fol. 41]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
DEPENDANTS' EXHIBIT 15



Mr. C. H. Bromann

-2-

August 30, 1957

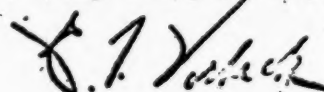
The 350 contract has two further advantages,

- 1) it permits the use of female wrappers, and
- 2) all restrictions on automatic wrapping machines have been removed from the contract.

Insofar as I know, no employer has taken advantage of the latter provision, but all chains are now employing female wrappers. Obviously, I regard the Local 350 contract as superior to the Local 612 contract.

I am of the opinion that you will find the chains' interests substantially what they have been in the past. In other words, we will continue to press for the removal of all restrictions on our operations, which of course means night opening, the right to use female wrappers and fully automatic wrapping machines, the flexible workday, the right to have products prepriced off the premises, and the right to sell frozen fresh meats. It is my sincere hope that the independents which you and your affiliated associations represent can unite with the chains in endeavoring to secure most or all of these objectives. In any event, I expect to see you on Thursday, September 5 at the Bismarck Hotel about 9:30 in the morning, at which time all employers are scheduled to meet to determine the positions they will take at the afternoon's negotiations.

Very truly yours,



E. T. Vorbeck  
General Attorney

ETV/bw

Encs.

[fol. 42]

WINSTON, STRAWN, SMITH & PATTERSON

FIRST NATIONAL BANK BUILDING

CHICAGO 3

FINANCIAL 8-3800

JOHN C. SLADE  
HAROLD A. SMITH  
GRIER D. PATTERSON  
PAUL H. MOORE  
CHARLES J. CALDERINI  
GEORGE B. CHRISTENSEN  
THOMAS I. UNDERWOOD  
ARTHUR D. WELTON, JR.  
THOMAS A. REYNOLDS  
BRYCE L. HAMILTON  
REUBEN A. BORSCH  
ALBERT W. POTTS  
JAMES G. HEAD  
THOMAS S. TYLER

FRANK D. KENNEY  
J. ARDEN REARICK  
RICHARD J. FALETTI  
FRED H. DAUGHERTY  
R. LAWRENCE STORMS  
THOMAS A. REYNOLDS, JR.  
LLOYD G. HEROLD  
DAVID C. KEEGAN

DOUGLAS C. MOIR  
FRANK S. GILMER  
ROBERT MCOUGAL, JR.  
GERARD E. GRASHORN  
NEAL J. MAULIFFE  
EDWARD J. WENDROW  
PAUL T. KESSLER, JR.  
CHARLES F. MARQUIS  
ALEXANDER J. MOODY  
BRUCE M. SMITH  
NEIL MEYER  
EDMUND J. KENNY  
CALVIN P. SAWYER  
CRANE C. HAUSER

DON H. SOWERS  
JOY H. FARNSWORTH  
JAMES L. PERRINS  
EDWARD L. FOOTE  
J. WILLIAM BRAITHWAITE  
DAVID J. HAROT  
FRANK O. WETMORE  
M. LEE BISHOP

RECEIVED

OCT 4 1957

JOHN D. SLACK  
LYLE W. MALEY

1st COUNSEL

FREDERICK H. WINSTON 1883-1888  
FREDERICK S. WINSTON 1878-1888  
SILAS H. STRAWN 1881-1848  
RALPH M. SHAW 1893-1848

DOCKETED

October 2, 1957

58C145

FILED

MAY 28 1963

Jewel Food Stores  
1955 West North Avenue  
Melrose Park, Illinois

Attention: Mr. E.T. Vorbeck

Gentlemen:

AT O'CLOCK  
ELBERT A. WAGNER, JR.  
CLERK

You have requested our opinion as to the legality of a provision insisted upon by Amalgamated Meat Cutters, Local No. 546, and Associated Food Retailers of Greater Chicago, Incorporated, for inclusion in a so-called "service contract," which provides that meat market operating hours shall be 9:00 A.M. to 6:00 P.M., Monday through Saturday inclusive. No customer shall be served who comes into the market before or after the hours set forth above, except that customers in the market at the closing hour shall be served. The same parties are insisting upon a substantially equivalent provision in a contract for so-called "self-service markets," except that meats not for human consumption, bacon, delicatessen meats, frozen poultry and frozen packaged fish may be sold at other hours. The effect of the provision is that regardless of wages, hours and working conditions, the Union and the Associated Food Retailers of Greater Chicago, Incorporated (or enough of its members to control its actions) are insisting that trade in most meats for human consumption take place only within these specified hours and that meats for human consumption be withheld from the public at all other times. The result is that meat for dogs can be bought at the convenience of the buyer in the Chicago area but that meat for people can be bought only at the times dictated by the Retailers-Union combination.

It is our opinion that this restriction of trade is a clear violation of the antitrust laws.

[fol. 43]

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANTS' EXHIBIT 16

THOMAS A. REYNOLDS  
BRYCE L. HAMILTON  
REUBEN A. BORSCH  
ALBERT W. POTTS  
JAMES D. HEAD  
THOMAS S. TYLER

FRANK D. KENNEY  
J. ARDEN REARICH  
RICHARD J. FALETTI  
FRED H. DAUGHERTY  
R. LAWRENCE STORMS  
THOMAS A. REYNOLDS, JR.  
LLOYD G. HEROLD  
DAVID C. REEDAN

ALEXANDER J. MOODY  
BRUCE M. SMITH  
NEIL M. RAY  
EDMUND J. KENNY  
CALVIN P. SAWYER  
CRANE C. HAUSER

DON M. SOWERS  
JOY H. FARNSWORTH  
JAMES L. PERRINS  
EDWARD L. FOOTE  
J. WILLIAM BRAITHWAITE  
DAVID J. HARDY  
FRANK O. WETMORE  
H. LEE BISHOP

FINANCIAL 6-3600

FREDERICK H. WINSTON (1853-1898)  
FREDERICK S. WINSTON (1878-1908)  
SILAS H. STRAWN (1881-1948)  
RALPH M. SHAW (1893-1948)

DOCKETED

October 2, 1957

58C145

FILED

Jewel Food Stores  
1955 West North Avenue  
Melrose Park, Illinois

MAY 28 1963

Attention: Mr. E.T. Vorbeck

AT \_\_\_\_\_ O'CLOCK  
ELBERT A. WAGNER, JR.  
CLERK

Gentlemen:

You have requested our opinion as to the legality of a provision insisted upon by Amalgamated Meat Cutters, Local No. 546, and Associated Food Retailers of Greater Chicago, Incorporated, for inclusion in a so-called "service contract," which provides that meat market operating hours shall be 9:00 A.M. to 6:00 P.M., Monday through Saturday inclusive. No customer shall be served who comes into the market before or after the hours set forth above, except that customers in the market at the closing hour shall be served. The same parties are insisting upon a substantially equivalent provision in a contract for so-called "self-service markets," except that meats not for human consumption, bacon, delicatessen meats, frozen poultry and frozen packaged fish may be sold at other hours. The effect of the provision is that regardless of wages, hours and working conditions, the Union and the Associated Food Retailers of Greater Chicago, Incorporated (or enough of its members to control its actions) are insisting that trade in most meats for human consumption take place only within these specified hours and that meats for human consumption be withheld from the public at all other times. The result is that meat for dogs can be bought at the convenience of the buyer in the Chicago area but that meat for people can be bought only at the times dictated by the Retailers-Union combination.

It is our opinion that this restriction of trade is a clear violation of the antitrust laws.

Without going into detail, because, as you know, the subject of the antitrust laws is an extremely complex one, we

[fol. 43]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANTS' EXHIBIT 16



Jewel Food Stores

- 2 -

October 2, 1957

refer you to such cases as Kold Kist, Inc. v. Amalgamated Meat Cutters, 221 P. 2d 724; Alpha Beta Food Market v. Amalgamated Meat Cutters, 305 P. 2d 163; Red Owl Stores, Inc. v. Amalgamated Meat Cutters, 109 F. Supp. 629.

You have three courses of action open to you:

- (1) You could now file an action for declaratory judgment and, if our views are correct, secure judgment that the action of the aforementioned parties is an illegal conspiracy;
- (2) You could proceed for an injunction either separately from the declaratory judgment action or as a part of it;
- (3) You could refuse to sign the contract, a strike might ensue, and you could then sue the parties for your resultant damages, trebled.

There is a fourth course of action open to you, which is to suggest to the Antitrust Division of the Department of Justice that it conduct an investigation looking to criminal action. On the whole, we think it is better for you to be in charge of your own investigation and litigation rather than to turn it over to third parties who may not press it as promptly as you may press it yourselves.

Very truly yours,

GBC:mbk

*William Howard Smith & Peterson*

[fol. 43a]

Nights

Offer made to Union on November 1, 1957 on behalf of

JEWEL TEA CO., INC.

APPROVED

Contract provisions other than wage scales to be applicable to all cities in all locals in which the Company operates Jewel markets. Wage increases (but not wage scales) to apply to all cities in all locals in which the Company operates Jewel markets.

Industry offer except as modified as follows:

- 1 - Term: 2 years
- 2 - Nights of Operation: 5 on 2 off
- 3 - Female Wrappers

(a) Wage Scale -

	Two Years
0 - 6 months	\$52.50
6 - 12 "	55.00
12 - 18 "	57.50
18 - 24 "	60.00
24 - 36 "	65.00
After 36 "	70.00

(b) Duties - to be as defined in industry offer.

(c) Reasonable initiation fees and dues in line with wage scale.

(d) Same male employment guarantee as set out in industry offer.

- 4 - Effective 11/15/57 the workday to be changed to an eight (8) hour flexible workday to be worked between the hours of:

(a) 8:00 A.M. to 9:00 P.M. - Mon - Fri

(b) 8:00 A.M. to 6:00 P.M. - Sat

- 5 - Effective 11/15/57 all contract provisions requiring the payment of time and one half for work before 9:00 A.M. and after 6:00 P.M. to be eliminated and the following provision substituted therefor:

(a) Night work premium in the amount of 25% per hour shall be payable for all hours worked after 6:00 P.M. up to 6:00 A.M. effective on and after

[fol. 44]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANTS' EXHIBIT 17



Contract provisions other than wage scales to be applicable to all cities in all locals in which the Company operates Jewel markets. Wage increases (but not wage scales) to apply to all cities in all locals in which the Company operates Jewel markets. *These wage scales are applicable to all Jewel markets which is operated after 6 P.M. that is in Jewel markets of Jewel markets after 6 P.M.*

Industry offer except as modified as follows:

- 1 - Term - *2 years*
- 2 - Nights of Operation - *Five; Monday through Friday - 10:00 P.M. to 6:00 A.M. - 10:00 P.M. to 6:00 A.M. - 10:00 P.M. to 6:00 A.M.*
- 3 - Female Wrappers - *3 on duty - 10:00 P.M. to 6:00 A.M. - 10:00 P.M. to 6:00 A.M. - 10:00 P.M. to 6:00 A.M.*

(a) Wage Scale -

	Two Years
0 - 6 months	\$52.50
6 - 12 "	55.00
12 - 18 "	57.50
18 - 24 "	60.00
24 - 36 "	65.00
After 36 "	70.00

- (b) Duties - to be as defined in industry offer.
- (c) Reasonable initiation fees and dues in line with wage scale.
- (d) Same male employment guarantee as set out in industry offer.

4 - Effective *11/15/57* the workday to be changed to an eight (8) hour flexible workday to be worked between the hours of:

- (a) 8:00 A.M. to 9:00 P.M. - *Mon - Fri*
- (b) 8:00 A.M. to 6:00 P.M. - *Sat*

5 - Effective *11/15/57* all contract provisions requiring the payment of time and one half for work before 9:00 A.M. and after 6:00 P.M. to be eliminated and the following provision substituted therefor:

- (a) Night work premium in the amount of 25% per hour shall be payable for all hours worked after 6:00 P.M. up to 6:00 A.M. *effective on and after*
- (b) Overtime may be worked at any time, except Sundays and holidays, at the discretion of the employer, provided it is paid for at time and one half the employee's regular hourly rate of pay as defined herein. Overtime shall be payable on the above basis for all hours worked:

[fol. 44]  
IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
DEPENDANTS' EXHIBIT 17

11/1/57

- (1) After 8 hours of work in any workday;
- (2) After 4 hours of work on the sixth day of a workweek provided however that effective October 6, 1958 and continuing for the balance of the term hereof, overtime shall be payable for all hours worked after 40 hours of work in any workweek; and
- (3) Before 8:00 A.M.

For the purpose of this overtime provision, the employee's regular rate of pay shall mean the employee's hourly rate (including night work premium, when applicable) of pay in effect during the overtime hours.

- (c) Overtime shall not be pyramided; that is, paid for twice for the same hour worked. Thus, in calculating the overtime for any employee in any workweek, any hours for which overtime is payable under one of the above provisions shall not be used for calculating overtime under any other provision.
- (d) Hours not worked on a holiday but which are paid for under Article VI, Section 1 shall not be considered as hours worked for the purpose of computing overtime pay.

(This means the dropping of extra day rates at \$1 premium effective on the same date the above overtime provision <sup>becomes effective</sup> and the substitution of sixth half day rates at a 50% premium therefor.)

6 - Reduce the workweek in all areas in which the company has operations where the workweek is now 42½ hours or more by 2½ hours effective 11/25/57.

7 - Wage Scale for apprentices applicable to both Service and Self-Service Markets:

0 - 6 months  
6 - 12 "  
12 - 18 "  
18 - 24 "  
24 - 36 "

Dates Effective	
10/7/57	10/6/58
74.50	76.00
76.00	79.50
79.00	83.00
84.50	87.50
89.00	92.00

8 - Wage Scales for Head Meat Cutters and Journeymen

(a) Self Service Markets

Head Meat Cutters -  
Journeymen -

\$10

Wage Scale Dates Effective	
10/7/57	10/6/58
116.50	121.50
110	115

Wage Scale Dates Effective	
10/7/57	10/6/58
10	5
10	5

[fol. 45]

For the purpose of this overtime provision, the employee's regular rate of pay shall mean the employee's hourly rate (including night work premium, when applicable) of pay in effect during the overtime hours.

- (This means the dropping of extra day rates at \$1 premium effective on the same date the above overtime provision <sup>becomes effective</sup> and the substitution of sixth half day rates at a 50¢ premium therefor.)

## 7. Wage Scale for apprentices applicable to both Service and Self-Service Markets:

Dates Effective	
10/7/57	10/6/58
76.50	76. -
76. -	79.50
79. -	83. -
82.50	87.50
89. -	93. -

## 8 - Wage Scales for Head Meat Cutters and Journeymen

# Journeymen

Wing Seal  
Dates Effective  
10/7/57 10/6/58  
#116<sup>50</sup> 121<sup>50</sup>  
110 - 115 -

Wing	
Dr. 10	101.1
10	5.
10	5

~~First Year (increase applicable  
to S.S. plus \$1.50 per  
year)  
Find Meat Cutters  
Journeyman~~



-3-

11/1/57

8 - Continued

~~Alternative offer~~

Head Meat Cutters

Journeyman

(  
 \$ Increase applicable  
 to S.S. plus \$2.50,  
 first year plus  
 \$2 - second year)

Wage Scale

11450

10800

Rate

17150

11500

12-7

12-7

9 - Combine Service &amp; Self-Service Contractors

- 10 - No objection to application with  
 the industry without night operations at a lower wage scale.
- 11 - No more favorable terms may be granted to  
 other applicants for night markets or operations under the  
 same terms as attended to June 1.

PROPOSAL MADE TO THE UNION ON NOVEMBER 12, 1957.

IN BEHALF OF THE INDUSTRY, EXCLUDING *Associated Trade Union of Greater Chicago*

*To be printed by Business & Finance group on the wing of Thursday 11/14/57*

Applications:- Contract provisions proposed herein to be applicable to all cities in all Locals, excluding Local No. 189, in which employers operate meat markets or departments. The proposals are as follows:

1. Term of Agreement:- 2 years. Effective date - October 7, 1957, except as otherwise proposed herein re specific provisions; Expiration date - October 3, 1959.
2. Night Operation:- Friday night meat department operation effective December 2, 1957. Male employees to be on duty during market operation.
3. Wage Schedule:-

(a) Self-Service Markets

	Effective Dates	
	10-7-57	10-4-58
Head Meat Cutter	$\frac{114.50}{106} = (600)$	$\frac{116.50}{110} = (400)$
Journeyman		
Service Markets		
Head Meat Cutter	$\frac{110.00}{103.50} = (800)$	$\frac{116.50}{110} = (600)$
Journeyman		

(b) Apprentices

	10-7-57	10-4-58	10-4-58
0 to 6 Months	72.00	71.00	75.00
6 to 12 Months	75.00	74.00	78.00
12 to 18 Months	77.50	76.50	80.00
18 to 24 Months	80.00	79.00	83.50
24 to 36 Months	86.00	85.00	89.00

Note: Apprentices rates to be based on percentage ratio of Self-Service journeyman rate, as follows:

0 to 6 Months	66%
6 to 12 Months	69%
12 to 18 Months	72%
18 to 24 Months	75%
24 to 36 Months	81%

(Apprentice rates apply to Service and Self-Service Markets and Departments).

4. Female Wrappers

(a) Wage Schedule:-

0 to 6 Months	$\frac{55.50}{55.50} =$	$\frac{57.50}{57.50} =$	$\frac{57.50}{57.50} =$
6 to 12 Months	$\frac{55.50}{55.50} =$	$\frac{57.50}{57.50} =$	$\frac{57.50}{57.50} =$

[fol. 47]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IL

DEFENDANT'S EXHIBIT 18

*Two Years*  
55.50  
57.50  
57.50



are as follows:

1. Term of Agreement: - 2 years. Effective date - October 7, 1957, except as otherwise proposed herein re specific provisions; Expiration date - October 3, 1959.
2. Night Operation: - Friday night meat department operation effective December 2, 1957. Male employees to be on duty during market operation.
3. Wage Schedule:-

(a) Self-Service Markets

	Effective Dates
	10-7-57      10-6-58
Head Meat Cutter	114.50 (100%)      116.50 (100%)
Journeyman	106.00 (92%)      110.00 (94%)
<u>Service Markets</u>	
Head Meat Cutter	110.00 (80%)      116.50 (100%)
Journeyman	103.50 (94%)      110.00 (94%)

(b) Apprentices

0 to 6 Months	72.00	71.00	82.50	75.00
6 to 12 Months	75.00	72.00	78.00	78.00
12 to 18 Months	77.50	74.00	79.50	80.50
18 to 24 Months	80.00	77.00	82.50	83.50
24 to 36 Months	86.00	82.00	89.00	89.00

Note: Apprentice rates to be based on percentage ratio of Self-Service journeyman rate, as follows:

0 to 6 Months	66%
6 to 12 Months	69%
12 to 18 Months	72%
18 to 24 Months	75%
24 to 36 Months	81%

(Apprentice rates apply to Service and Self-Service Markets and Departments).

4. Female Wrappers

(a) Wage Schedule:-

0 to 6 Months	55.00	55.00	55.00
6 to 12 Months	55.00	55.00	55.00
12 to 18 Months	55.00	55.00	55.00
18 to 24 Months	55.00	55.00	55.00
24 to 36 Months	55.00	55.00	55.00
After 36 Months	55.00	55.00	55.00

(Part-time wrappers to receive pro-rata weekly rate of full-time wrapper; part-time wrappers to not be employed in excess of 24 hours per week; wage progression to be based on accumulated hours equivalent to those worked by full-time wrappers).

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
DEFENDANTS' EXHIBIT 18

[fol. 47]

11/14/57  
9

4. Female Wrappers (Continued)

(b) Duties:- Wrapping (including boarding and traying), sealing, scaling, pricing, labeling, displaying and slicing of luncheon meats.

(c) Male employment guarantee:- No male employee on the payroll as of the Monday following ratification of the contract shall lose his employment due to the hiring of a female wrapper; the Union shall be notified immediately of the employment of new female wrappers.

5. Wage Rates for 5th Day of Work in Holiday Week and 6th Day of Work in Regular Week:- To be adjusted in direct ratio to Wage Schedules specified above plus present amount of premium.

*not to be  
lower on 5th day*

6. Work Day; Luncheon Period:-

(a) Effective December 2, 1957, the work day to be changed to an 8 hour work day to be worked between the hours of:

1. 8:00 A.M. to 6:00 P.M. on Monday, Tuesday, Wednesday, Thursday, and Saturday.

2. 8:00 A.M. to 9:00 P.M. on Friday.

(b) One hour shall be allowed for lunch in all markets whether manned by one or more than one employee; said lunch hour to begin no earlier than 11:00 A.M. and to end no later than 2:00 P.M. except that employees scheduled to work until 9:00 P.M. shall be allowed a supper period in lieu of lunch period.

(c) Employees must be dressed and ready for work at the scheduled starting time.

7. Overtime or Premium Pay:- Effective December 2, 1957, all contract provisions requiring the payment of time and one-half after 6:00 P.M. and before 9:00 A.M. to be eliminated and the following provision substituted therefor:

(a) Night premium in the amount of 25¢ per hour shall be payable for all hours worked after 6:00 P.M. up to 6:00 A.M.

(b) Overtime may be worked at any time except Sundays and holidays at the discretion of the employer; overtime to be paid for at time and one-half the employee's regular hourly wage rate. Overtime payable on the above basis for all hours worked:

1. After 8 hours of work in any work day.

2. Before 8:00 A.M.

(c) Employee's regular hourly wage rate is defined as the employee's straight hourly wage rate (including night work premium, when applicable) of pay in effect during overtime hours.

(d) Overtime shall not be pyramided; that is, paid for twice for the same hour worked; thus, in calculating the overtime for any employee in any work week, any hours for which overtime is payable under one of the above provisions shall not be used for calculating overtime under any other provision.

*Effective Dec. 2, 1957*

Work Week: The work week shall consist of 60 hours in all Locals (including *Real*)

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- (c) Male employment guarantee:- No male employee on the payroll as of the Monday following ratification of the contract shall lose his employment due to the hiring of a female wrapper; the Union shall be notified immediately of the employment of new female wrappers.

5. Wage Rates for 5th Day of Work in Holiday Week and 6th Day of Work in Regular Week:- To be adjusted in direct ratio to Wage Schedules specified above plus present amount of premium.

6. Work Day; Luncheon Period:-

- (a) Effective December 2, 1957, the work day to be changed to an 8 hour work day to be worked between the hours of:

1. 8:00 A.M. to 6:00 P.M. on Monday, Tuesday, Wednesday, Thursday, and Saturday.
2. 8:00 A.M. to 9:00 P.M. on Friday.

- (b) One hour shall be allowed for lunch in all markets whether manned by one or more than one employee; said lunch hour to begin no earlier than 11:00 A.M. and to end no later than 2:00 P.M. except that employees scheduled to work until 9:00 P.M. shall be allowed a supper period in lieu of lunch period.

- (c) Employees must be dressed and ready for work at the scheduled starting time.

7. Overtime or Premium Pay:- Effective December 2, 1957, all contract provisions requiring the payment of time and one-half after 6:00 P.M. and before 9:00 A.M. to be eliminated and the following provision substituted therefor:

- (a) Night premium in the amount of 25¢ per hour shall be payable for all hours worked after 6:00 P.M. up to 6:00 A.M.

- (b) Overtime may be worked at any time except Sundays and holidays at the discretion of the employer; overtime to be paid for at time and one-half the employee's regular hourly wage rate. Overtime payable on the above basis for all hours worked:

1. After 8 hours of work in any work day.
2. Before 8:00 A.M.

- (c) Employee's regular hourly wage rate is defined as the employee's straight hourly wage rate (including night work premium, when applicable) of pay in effect during overtime hours.

- (d) Overtime shall not be pyramided; that is, paid for twice for the same hour worked; thus, in calculating the overtime for any employee in any work week, any hours for which overtime is payable under one of the above provisions shall not be used for calculating overtime under any other provision.

8. Work Week:- <sup>Effective Dec. 2, 1957</sup> The work week shall consist of 40 hours in all Locals <sup>(including Local No. 262)</sup> except Local No. 262. The work week in Service Markets <sup>(including Local No. 262)</sup> ~~instituted within the jurisdiction of Local No. 262~~ shall be reduced from 42 to 40 hours, effective ~~December 2, 1957~~.

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9. Clean-Up Time:

(a) Self-Service Markets: - Clean-up may be performed after 6:00 P.M. provided 25¢ per hour premium is paid for such work performed after 6:00 P.M.

Service Markets: - Customers in the meat department at closing hour shall be served; all meats will be properly taken care of and the market placed in a sanitary condition; such work not to exceed 15 minutes after closing hour and is not to be construed as time worked. Clean-up time shall not be utilized to prepare for the following day's business and shall not be cumulative from day to day. It is understood that no customer shall be served who comes into the market or meat department before or after the hours set forth in Article 5. (Market Operating Hours).

10. Article 4, Section 5 - eliminate in Service and Self-Service contracts.

11. Article 4, Section 7 - Second and third paragraphs of Self-Service contract eliminate.

12. Article 2, Section 2 of Self-Service contract and Article 2 of Service contract - Add to or revise as follows:

Those items which may be pre-packaged off the premises by the packer, supplier or the employer may be pre-priced off the premises.

13. Article 2 - Modify the Article in both Service and Self-Service contracts to permit the sale outside of market operating hours of fresh poultry processed on the premises, fresh pork sausage, smoked hams, smoked butts, and ham slices from Self-Service cases.

14. Frozen Specialty Items: - Modify Article 2 in Service and Self-Service contracts to provide that the employer may sell frozen fresh meat specialty items processed off the premises, but not including frozen fresh cuts comparable to the standard fresh retail cuts.

Examples of items that may be sold:

- (a) Frozen and formed (flaked, chopped or cubed) patties with or without butter or vegetables.
- (b) Frozen and formed (flaked, chopped or cubed) patties, steaks or chopettes, breaded or not breaded.
- (c) Frozen and formed meat balls.
- (d) Frozen offal (liver, brains, kidneys, hearts, sweetbreads, etc.).

15. Article 2 of Self-Service contract - Modify to provide that special service type delicatessen departments requiring manual processing of unwrapped smoked sausage, loaf meats and ready-to-eat meats can be operated in Self-Service markets with the same jurisdictional exemption as in Article 2. of the Service contract.

16. Rest Periods: - Two 10 minute rest periods per day in Service and Self-Service contracts.



shall be served and consumed before or after the hours set forth in Article 5. (Market Operating Hours).

10. Article 4, Section 5 - eliminate in Service and Self-Service contracts.

11. Article 4, Section 7 - Second and third paragraphs of Self-Service contract - eliminate.

12. Article 2, Section 2 of Self-Service contract and Article 2 of Service contract - Add to or revise as follows:

Those items which may be pre-packaged off the premises by the packer, supplier or the employer may be pre-priced off the premises.

13. Article 2 - Modify the Article in both Service and Self-Service contracts to permit the sale outside of market operating hours of fresh poultry processed on the premises, fresh pork sausage, smoked hams, ~~and~~ smoked butts, and ham slices, ~~from Self-Service contracts.~~

14. Frozen Specialty Items:- Modify Article 2 in Service and Self-Service contracts to provide that the employer may sell frozen fresh meat specialty items processed off the premises, but not including frozen fresh cuts comparable to the standard fresh retail cuts.

Examples of items that may be sold:

(a) Frozen and formed (flaked, chopped or cubed) patties with or without butter or vegetables.

(b) Frozen and formed (flaked, chopped or cubed) patties, steaks or chopettes, breaded or not breaded.

(c) Frozen and formed meat balls.

(d) Frozen offal (liver, brains, kidneys, hearts, sweetbreads, etc.).

15. Article 2 of Self-Service contract.- Modify to provide that special service type delicatessen departments requiring manual processing of unwrapped smoked sausage, loaf meats and ready-to-eat meats can be operated in Self-Service markets with the same jurisdictional exemption as in Article 2. of the Service contract.

16. Rest Periods:- Two 10 minute rest periods per day in Service and Self-Service contracts.

17. Article 8, Section 3. Modify both contracts to provide 30 day continuance of contract and a maximum of 60 day wage retroactivity.

18. Successor and Assigns Provision:- As agreed upon.

19. Right of Industry to Change and Amend Proposal at Any Time.

Stephen, Cantrell, Nulabrowski, Kelly, Robert Rosa  
12.1.18



Committee said these offer are not in  
good as London City Public committee  
It cost in about the same - all cost  
considered. is not suit to same

(to say # 5 & 4 + inter engaged  
in the game)

Settled for 4+4 plus London in  
the game

Time off for death in the month July 31st  
" " " " July 1st

Glen Fishman of London Public Committee  
has been involved in the negotiations  
for the game

After the death of the player in the game  
the game was not played and the game was not played

- Examples of items that may be sold:
- (a) Frozen and frozen (frozen, changed or changed) practice with or without frozen or without practice.
  - (b) Frozen and frozen (frozen, changed or changed) practice with or without practice, frozen or not provided.
  - (c) Frozen and frozen with practice.
  - (d) Frozen and frozen (frozen, changed, practice, practice, practice, etc.).

After the death of the player in the game  
the game was not played and the game was not played

the game was not played and the game was not played

*Handwritten notes at the top of the page, including "revised" and "July 31".*

*Time off for death in the month of July 31*

*Ellen Fishman of Fed. Education Council  
has been assigned to the  
negotiations*

*Ellen Fishman of Fed. Education Council  
has been assigned to the  
negotiations*

*Examples of terms that may be sought*

- (a) Frozen and frozen (liquid, changed or ended) parties
- (b) Frozen and frozen (liquid, changed or ended) parties
- (c) Frozen and frozen (liquid, changed or ended) parties
- (d) Frozen and frozen (liquid, changed or ended) parties

*Handwritten notes and signatures in the middle section of the document.*

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[fol. 50]

PROPOSAL MADE TO THE UNION ON NOVEMBER 15, 1957,

IN BEHALF OF THE INDUSTRY A FORMING ASSOCIATION REPRESENTING

Application:- Contract provisions proposed herein to be applicable to all cities in all Locals, excluding Local No. 189, in which Employers operate meat markets or departments. The proposal are as follows:

1. Term of Agreement:- 2 Years. Effective date - October 7, 1957, except as otherwise proposed herein re specific provisions; Expiration date - October 3, 1959.

2. Night Operation:- Friday night meat department operation, effective 1958, male employee to be on duty during market operation.

3. Wage Schedule:-

(a) Self-Service Markets

	Effective Dates	
	10-7-57	10-6-58
Head Meat Cutter	116.50	118.50
Journeyman (10)	110.00	112.00

Service Markets

	Effective Dates	
Head Meat Cutter	114.00	116.50
Journeyman (14)	107.00	110.00

(b) Apprentices

	Effective Dates	
0 to 6 Months	74.00	75.00
6 to 12 Months	75.00	76.00
12 to 18 Months	76.00	77.00
18 to 24 Months	77.00	78.00
24 to 36 Months	78.00	79.00

(Apprentice rates apply to Service and Self-Service Markets and Departments).

4. Female Wrappers

(a) Wage Schedule:-

	Effective from
	12-2-57 to 10-3-59
0 to 6 Months	55.50
6 to 12 Months	56.00
12 to 18 Months	57.50
18 to 24 Months	60.00
24 to 36 Months	65.00
After 36 Months	70.00

[fol. 51]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF

DEFENDANTS' EXHIBIT 1

Application:- Contract provisions proposed herein to be applicable to all cities in all Locals, excluding Local No. 189, in which Employers operate meat markets or departments. The proposals are as follows:

1. Term of Agreement:- 2 Years. Effective date - October 7, 1957, except as otherwise proposed herein re specific provisions; Expiration date - October 3, 1959.

2. Night Operation:- Friday night meat department operation, effective 10-1-57, 1957, male employee to be on duty during market operation.

3. Wage Schedule:-

(a) Self-Service Markets

	Effective Dates	
	10-7-57	10-6-58
Head Meat Cutter	116.50	118.50
Journeyman	110.00	114.00
Service Markets		
Head Meat Cutter	114.00	116.50
Journeyman	107.00	110.00

(b) Apprentices

0 to 6 Months	75.00	75.00
6 to 12 Months	75.00	78.00
12 to 18 Months	78.00	81.00
18 to 24 Months	81.00	84.00
24 to 36 Months	84.00	89.00

(Apprentice rates apply to Service and Self-Service Markets and Departments).

Female Wrappers

(a) Wage Schedule:-

Effective from 12-2-57 to 10-3-59

0 to 6 Months	55.50
6 to 12 Months	55.50
12 to 18 Months	57.50
18 to 24 Months	60.00
24 to 36 Months	65.00
After 36 Months	70.00

(Part-time wrappers to receive pro-rata weekly rate of full-time wrapper; part-time wrappers to not be employed in excess of 24 hours per week; wage progression to be based on accumulated hours equivalent to those worked by full-time wrappers).

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
DEFENDANTS' EXHIBIT 19

[fol. 51]

Def. ex. 19



4. Female Wrappers (Continued)

- (b) Duties:- Wrapping (including boarding and trayng), sealing, scaling, pricing, labeling, displaying, and slicing of luncheon meats.
- (c) Male Employment Guarantees:- No male employee on the payroll as of the Monday following ratification of the contract shall lose his employment due to the hiring of a female wrapper; the Union shall be notified immediately of the employment of new female wrappers.

5. Wage Rates for 5th Day of Work in Holiday Week and 6th Day of Work in Regular Week:- To be adjusted in direct ratio to Wage Schedules specified above plus 25% per hour premium ✓

6. Work Day; Luncheon Period:-

- (a) Effective December 2, 1957, the work day to be changed to an 8 hour work day to be worked between the hours of:

1. 8:00 A.M. to 5:00 P.M. on Monday, ~~Tuesday, Wednesday, Thursday, and Saturday.~~ Saturday  
2. 8:00 A.M. to 9:00 P.M. on Friday. 10:00 Wed

- (b) One hour shall be allowed for lunch in all markets whether manned by one or more than one employee; said lunch hour to begin no earlier than 11:00 A.M. and to end no later than 2:00 P.M. except that employees scheduled to work until 9:00 P.M. shall be allowed a supper period in lieu of lunch period.

- (c) Employees must be dressed and ready for work at the scheduled starting time.

Overtime or Premium Pay:- Effective December 2, 1957, all contract provisions requiring the payment of time and one-half after 6:00 P.M. and before 9:00 A.M. to be eliminated and the following provision substituted therefor:

~~Overtime in the amount of 25% per hour shall be payable for all hours worked after 6:00 P.M. up to 6:00 A.M.~~

- (a) Overtime may be worked at any time except Sundays and holidays at the discretion of the employer; overtime to be paid for at time and one-half the employee's regular hourly wage rate. Overtime payable on the above basis for all hours worked;

1. After 8 hours of work in any work day.

2. Before 8:00 A.M.

- (b) Employee's regular hourly wage rate is defined as the employee's straight hourly wage rate, ~~including overtime premium, then in effect during overtime hours.~~ X

- (d) Overtime shall not be pyramided; that is, paid for twice for the same hour worked; thus, in calculating the overtime for any employee in any work week, any hours for which overtime is payable under one of the above provisions shall not be used for calculating overtime under any other provision.

8. Work Week:- The work week in Service Markets in cities within the



Wage Schedule for the City of Chicago  
in Regular Week:- To be adjusted in direct ratio to Wage Schedules  
specified above plus 25¢ per hour premium ✓

6. Work Day; Luncheon Period:-

- (a) Effective December 2, 1957, the work day to be changed to an 8 hour work day to be worked between the hours of:

1. 8:00 A.M. to 5:00 P.M. on Monday, Tuesday, Wednesday, Thursday, and Saturday.

2. 8:00 A.M. to 9:00 P.M. on Friday.

- (b) One hour shall be allowed for lunch in all markets whether manned by one or more than one employee; said lunch hour to begin no earlier than 11:00 A.M. and to end no later than 2:00 P.M. except that employees scheduled to work until 9:00 P.M. shall be allowed a supper period in lieu of lunch period.

- (c) Employees must be dressed and ready for work at the scheduled starting time.

Overtime or Premium Pay:- Effective December 2, 1957, all contract provisions requiring the payment of time and one-half after 6:00 P.M. and before 9:00 A.M. to be eliminated and the following provision substituted therefor:

~~Time premium in the amount of 25¢ per hour shall be payable for all hours worked after 6:00 P.M. up to 6:00 A.M.~~

- (a) Overtime may be worked at any time except Sundays and holidays at the discretion of the employer; overtime to be paid for at time and one-half the employee's regular hourly wage rate. Overtime payable on the above basis for all hours worked;

1. After 8 hours of work in any work day.

2. Before 8:00 A.M.

- (b) Employee's regular hourly wage rate is defined as the employee's straight hourly wage rate ~~in effect during overtime hours~~ in effect during overtime hours.

- (d) Overtime shall not be pyramided; that is, paid for twice for the same hour worked; thus, in calculating the overtime for any employee in any work week, any hours for which overtime is payable under one of the above provisions shall not be used for calculating overtime under any other provision.

8. Work Week:- The work week in Service Markets in cities within the jurisdiction of Local No. 262 shall be reduced from 42½ to 40 hours, effective October 6, 1958.

Continued on page 3 of the original proposal

Item 15 to be dropped

Def. ex 19

[fol. 52]

PROPOSAL OF UNION NEGOTIATING COMMITTEE TO INDUSTRY NUMBER 20, 1957

- 1) This proposal covers Locals 262, 320, 546, 547, 571 and 638.
- 2) Present self-service and service contracts to be renewed in all their provisions, except as amended below.
- 3) Amend Article 8, section 1 of both the service and self-service contracts to read as follows: "This Agreement shall become effective at 12:01 A.M., October 6, 1957 and shall expire at 12:00 mid-night October 3, 1959."
- 4) Amend Article 3 on wages in both the service and self-service contracts as follows:

Self-Service Markets

	<u>MINIMUM WEEKLY WAGE FOR BASIC WORK WEEK</u>	
	<u>Effective Oct. 6, 1957</u>	<u>Effective Oct. 6, 1958</u>
Head Meat Cutter	\$114.50	\$119.50
Journeyman Meat Cutter	108.00	113.00

Service Markets

	<u>MINIMUM WEEKLY WAGE FOR BASIC WORK WEEK</u>	
	<u>Effective Oct. 6, 1957</u>	<u>Effective Oct. 6, 1958</u>
Head Meat Cutter	\$111.50	\$117.50
Journeyman Meat Cutter	105.00	111.00

- 5) Further amend Article 3 of both the self-service and service contracts to provide the following scale of apprentice rates to be identical in both contracts:

	<u>MINIMUM WEEKLY WAGE FOR BASIC WORK WEEK</u>	
	<u>Effective Oct. 6, 1957</u>	<u>Effective Oct. 6, 1958</u>
Apprentices		
0 - 6 months	\$72.00	\$75.00
6 - 12 months	75.00	78.00
12 - 18 months	78.00	81.00
18 - 24 months	81.00	84.00
24 - 36 months	86.00	89.00

- 6) Further amend Article 3 on wages in both the service and self-service contracts to provide "extra day rates" computed on the following basis:

- a) The full day extra rate shall be 1/5 of the basic weekly wage plus \$2.00.
- b) The half day extra rate shall be 1/10 of the wage for the basic work

[fol. 53]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANTS' EXHIBIT 20

- 3) Amend Article 8, section 1 of both the service and self-service contracts to read as follows: "This Agreement shall become effective at 12:01 A.M., October 6, 1957 and shall expire at 12:00 mid-night October 3, 1959.
- 4) Amend Article 3 on wages in both the service and self-service contracts as follows:

Self-Service Markets

	<u>MINIMUM WEEKLY WAGE FOR BASIC WORK WEEK</u>	
	<u>Effective Oct. 6, 1957</u>	<u>Effective Oct. 6, 1958</u>
Head Meat Cutter	\$114.50	\$119.50
Journeyman Meat Cutter	108.00	113.00

Service Markets

	<u>MINIMUM WEEKLY WAGE FOR BASIC WORK WEEK</u>	
	<u>Effective Oct. 6, 1957</u>	<u>Effective Oct. 6, 1958</u>
Head Meat Cutter	\$111.50	\$117.50
Journeyman Meat Cutter	105.00	111.00

- 5) Further amend Article 3 of both the self-service and service contracts to provide the following scale of apprentice rates to be identical in both contracts:

MINIMUM WEEKLY WAGE FOR BASIC WORK WEEK  
Effective Oct. 6, 1957 : Effective Oct. 6, 1958

Apprentices		
0 - 6 months	\$72.00	\$75.00
6 - 12 months	75.00	78.00
12 - 18 months	78.00	81.00
18 - 24 months	81.00	84.00
24 - 36 months	86.00	89.00

- 6) Further amend Article 3 on wages in both the service and self-service contracts to provide "extra day rates" computed on the following basis:

- a) The full day extra rate shall be 1/5 of the basic weekly wage plus \$2.00.
- b) The half day extra rate shall be 1/10 of the wage for the basic work week plus \$1.00

DEPENDANTS' EXHIBIT 20

IN UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF ILLINOIS

[fol. 53]



7) Amend Article 4, Section 4, which is an overtime provision in both the service and self-service contracts to read as follows: "Overtime may be worked behind locked doors at overtime rates from 8:00 A.M. to 9:00 A.M. after 6:00 P.M., and after 8 hours in any one day, at the employer's discretion."

8) Amend the last paragraph of Article 2 of the service contract to provide as follows:

- a) The following items are to be added to the list of things which may be sold after market operating hours from self-service cases in service markets: fresh pork sausage, fresh cut-up or whole poultry (which has been wrapped, weighed and priced by meat dept. employees), smoked butts, smoked ribs, and smoked hocks (but not to include smoked hams or smoked picnics).

9) Amend Article 2, Section 3, of the self-service contract to add the following items at the bottom of the article:

- (4) Fresh pork sausage
- (5) Fresh poultry, cut-up or whole
- (6) Smoked butts, smoked ribs and smoked hocks

10) Modify Article 2 of both the service and the self-service contracts to permit the sale of certain frozen speciality meat items both during and outside of market operating hours with the speciality items to be agreed upon. These would not include frozen fresh cuts directly comparable to standard fresh retail cuts.

Examples of items that may be sold:

- a) Frozen and formed (flaked, chopped or cubed) patties with or without butter or vegetables.
- b) Frozen and formed (flaked, chopped or cubed) patties, steaks or chopettes, breaded or unbreaded.
- c) Frozen and formed meat balls.
- d) Frozen offal (liver, brains, kidneys, hearts, sweetbreads, etc.)

11) Amend Article 6 of both the service and self-service contract to provide that effective January 1, 1953 all employees having 10 years of continuous full time service shall be entitled to 3 weeks vacation with pay.

12) Amend Article 4, Section 1, of the service contract for Local 262, so that instead of reading "8 and  $\frac{1}{2}$  hours shall constitute the basic work day", it shall read, "8 hours shall constitute the basic work day". Amend Article 4, Section 4, of the service contract of Local 262 so that instead of "After 8 and  $\frac{1}{2}$  hours in any one day", it shall read, "After 8 hours in any one day".

13) Add to Article 4 of the service contract a new section to read as

[101.54]

service and self-service contracts to read as follows: "Overtime may be worked behind locked doors at overtime rates from 8:00 A.M. to 9:00 A.M. after 6:00 P.M., and after 8 hours in any one day, at the employer's discretion."

8) Amend the last paragraph of Article 2 of the service contract to provide as follows:

- a) The following items are to be added to the list of things which may be sold after market operating hours from self-service cases in service markets: fresh pork sausage, fresh cut-up or whole poultry (which has been wrapped, weighed and priced by meat dept. employees), smoked butts, smoked ribs, and smoked hocks (but not to include smoked hams or smoked picnics).

9) Amend Article 2, Section 3, of the self-service contract to add the following items at the bottom of the article:

- (4) Fresh pork sausage
- (5) Fresh poultry, cut-up or whole
- (6) Smoked butts, smoked ribs and smoked hocks

10) Modify Article 2 of both the service and the self-service contracts to permit the sale of certain frozen speciality meat items both during and outside of market operating hours with the speciality items to be agreed upon. These would not include frozen fresh cuts directly comparable to standard fresh retail cuts.

Examples of items that may be sold:

- a) Frozen and formed (flaked, chopped or cubed) patties with or without butter or vegetables.
- b) Frozen and formed (flaked, chopped or cubed) patties, steaks or chopettes, breaded or unbreaded.
- c) Frozen and formed meat balls.
- d) Frozen offal (liver, brains, kidneys, hearts, sweetbreads, etc.)

11) Amend Article 6 of both the service and self-service contract to provide that effective January 1, 1958 all employees having 10 years of continuous full time service shall be entitled to 3 weeks vacation with pay.

12) Amend Article 4, Section 1, of the service contract for Local 262, so that instead of reading "8 and  $\frac{1}{2}$  hours shall constitute the basic work day", it shall read, "8 hours shall constitute the basic work day". Amend Article 4, Section 4, of the service contract of Local 262 so that instead of "After 8 and  $\frac{1}{2}$  hours in any one day", it shall read, "After 8 hours in any one day".

13) Add to Article 4 of the service contract a new section to read as follows: "Section 9. Rest Period. Each employee shall have two rest periods of 10 minutes each to be taken daily at approximately the mid-point of each half shift".



**JEWEL TEA CO., INC.**

FOOD STORES AND HOME SERVICE ROUTES  
1955 WEST NORTH AVENUE — MELROSE PARK, ILLINOIS

**DOCKETED**

AUSTIN 7-6600  
FILLMORE 5-0500

LAW DIVISION

November 22, 1957

5821415  
**FILED**

**MAY 28 1963**

Mr. R. Emmett Kelly, Chairman  
Affiliated Unions Negotiating Committee Covering  
Meat Cutter Locals 189, 262, 320, 546, 547, 571 and 638  
130 North Wells Street  
Chicago, Illinois

AT O'CLOCK  
**ELBERT A. WAGNER, JR.**  
CLERK

Dear Sir:

In view of the comments made by the Union's Negotiating Committee in response to the offer made on behalf of Jewel Tea Co., Inc., National Tea Co., Piggly-Wiggly, High-Low and Hillman's on November 20, 1957, our company has decided to withdraw from that offer and to make a new proposal for submission by the Union's Negotiating Committee to the membership of the respective Locals at their meeting to be held November 24, 1957. Our detailed proposal is attached.

The highlights of our offer are as follows:

1. Wage Increases:

- a) Journeymen and Head Meat Cutters in Service markets - \$9.50 per week the first year, and \$6.00 per week the second year.
- b) Journeymen and Head Meat Cutters in Self-Service markets - \$8.00 the first year and \$5.00 the second year.
- c) Journeymen and Head Meat Cutters in Self-Service markets with Female Wrappers - \$13.00 the first year and \$5.00 the second year.

The wage increases for Journeymen and Head Meat Cutters in Self-Service markets employing Female Wrappers will be on an individual market basis. In other words, as soon as a Female Wrapper is employed in a Self-Service market, the contract wage scale for that Self-Service market

[fol. 56]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEPENDANTS' EXHIBIT 21

JEWEL TEA CO., INC.

FOOD STORES AND HOME SERVICE ROUTES  
1955 WEST NORTH AVENUE MELROSE PARK, ILLINOIS

DOCKETED

LAW DIVISION

AUSTIN 7-6600  
FILLMORE 5-0500

November 22, 1957

5821415  
FILED

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The highlights of our offer are as follows:

1. Wage Increases:

- a) Journeymen and Head Meat Cutters in Service markets - \$9.50 per week the first year, and \$6.00 per week the second year.
- b) Journeymen and Head Meat Cutters in Self-Service markets - \$8.00 the first year and \$5.00 the second year.
- c) Journeymen and Head Meat Cutters in Self-Service markets with Female Wrappers - \$13.00 the first year and \$5.00 the second year.

The wage increases for Journeymen and Head Meat Cutters in Self-Service markets employing Female Wrappers will be on an individual market basis. In other words, as soon as a Female Wrapper is employed in a Self-Service market, the contract wage scale for the Head Meat Cutter and Journeymen in that Self-Service market will immediately increase \$5.00, the increase to continue in effect so long as Female Wrappers are employed in that market. The employment of Female Wrappers is limited not only by the necessity of giving all Journeymen and Head Meat Cutters a \$5.00

[fol. 56]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANTS' EXHIBIT 21

November 22, 1957

wage increase upon the employment of the first wrapper, but also by the fact that no male employee in the service of the company as of the Monday following ratification of the contract by the membership shall lose his employment due to the hiring of a Female Wrapper. It is still further limited by the restriction on duties which she may perform.

- d) A new Apprentice wage scale which will provide wage increases ranging from \$4.00 per week upwards.
2. Effective January 1, 1958, three weeks of vacation with pay after ten years of employment service.
3. New market operating hours in the Chicago Locals and Group 1 of Local 189, which will enable us to better serve our customers. More specifically, our offer provides for one night of operation in the Chicago Locals to 9:00 p.m., and in Group 1 of Local 189, with time and one-half being payable for the hours worked after 6:00 p.m. and a continuation of the present workday; namely, from 9:00 a.m. to 6:00 p.m.

[fol. 57]

Insofar as the new Group 2 cities in Local 189 are concerned, the offer provides for six nights of operation, if desired, as is now permissible in some cities in this group.

If the contract provision prescribing the hours of market operating is not relaxed so as to permit at least one night of operation to 9:00 p.m. in all areas, then the company intends to litigate the legality of this contract restriction. We shall do so with genuine regret.

We urge the serious consideration of this final proposal.

Very truly yours,

JEWEL TEA CO., INC.

*E. T. Vorbeck*  
E. T. Vorbeck  
General Attorney

Sup. no. ex 211

OFFER MADE NOVEMBER 22, 1957  
ON BEHALF OF JEWEL TEA CO., INC.

DOCKETED

58C1415

1. Application: Locals 262, 320, 546, 547, 571, 638 and Groups 1 and 2  
in Local 189

2. Term: Two years

3. Wages:

FILED

MAY 28 1963

a) Service Markets

AT O'CLOCK  
ELBERT A. WAGNER, JR.  
CLERK

An increase in the amount of \$9.50 the first year and \$6.00 the second year for all Journeymen and Head Meat Cutters, resulting in the following wage scales:

	Effective 10-7-57	Effective 10-6-58
Head Meat Cutter	\$111.50	\$117.50
Journeymen	105.00	111.00

b) Self-Service Markets without female wrappers

An increase in the amount of \$8.00 the first year and \$5.00 the second year, resulting in the following wage scales:

	Effective 10-7-57	Effective 10-6-58
Head Meat Cutter	\$114.50	\$119.50
Journeymen	108.00	113.00

c) Self-Service Markets with female wrappers

Effective upon the employment of a female wrapper in a Self-Service market and continuing so long as a female is employed in such Self-Service market, the contract wage rate for Head Meat Cutters and Journeymen in that Self-Service market shall be increased by \$5.00 as follows:

- 1) If said female wrapper is employed during the first contract year, the wages of the Head Meat Cutter and Journeymen in that market for

[fol. 58]

IN UNITED STATES  
FOR THE NORTHERN ]

DEPENDANTS



3.

14) Add to Article ; entitled "Union Management Relations" an additional article to be headed, "Section 10" in the self-service contract and "Section 9" in the service contract to read as follows in both contracts, "This Agreement shall be binding on the Company herein and its successors and assigns".

15) All of the references to articles and sections referred to above except for the specific items on the Local 262 service contract have been made with reference to the article and section numbering of the service and self-service contracts of Local 546 and if other local contracts have different articles and/or section numbering, the modifications should be construed to apply as they apply in the 546 contract.



MAY 28 1963

3. Wages:

a) Service Markets

AT 0'CLOCK  
ELBERT A. WAGNER, JR.  
CLERK

An increase in the amount of \$9.50 the first year and \$6.00 the second year for all Journeymen and Head Meat Cutters, resulting in the following wage scales:

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	Effective 10-7-57	Effective 10-6-58
Head Meat Cutter	\$114.50	\$119.50
Journeymen	108.00	113.00

c) Self-Service Markets with female wrappers

Effective upon the employment of a female wrapper in a Self-Service market and continuing so long as a female is employed in such Self-Service market, the contract wage rate for Head Meat Cutters and Journeymen in that Self-Service market shall be increased by \$5.00 as follows:

- 1) If said female wrapper is employed during the first contract year, the wages of the Head Meat Cutter and Journeymen in that market for the balance of that contract year and for the second year shall be:

	First Year	Second Year
Head Meat Cutter	\$119.50	\$124.50
Journeymen	113.00	118.00

- 2) If said female wrapper is employed during the second year of the contract term, the wages of the Head Meat Cutter and Journeymen in the market shall be:

	Second Year
Head Meat Cutter	\$124.50
Journeymen	118.00

DEFENDANTS' EXHIBIT 21A

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

[fol. 58]

The rates for Head Meat Cutters and Journeymen in a Self-Service market will revert to the following rates immediately upon there ceasing to be any female wrapper employed in said Self-Service market:

	<u>First Year</u>	<u>Second Year</u>
Head Meat Cutter	\$114.50	\$119.50
Journeymen	108.00	113.00

d) Apprentice rates in both Service and Self-Service markets:

	<u>Effective 10-7-57</u>	<u>Effective 10-6-58</u>
0 to 6 Months	\$72.00	\$75.00
6 to 12 "	75.00	78.00
12 to 18 "	78.00	81.00
18 to 24 "	81.00	84.00
24 to 36 "	86.00	89.00

- e) A 12 $\frac{1}{2}$  hourly increase in the premium for sixth day work and on the fifth day of a holiday week; in other words, the premium for such work is increased from \$1.00 per day to \$2.00 per day.

4. Female Wrappers:

- a) May be employed at the following wage schedule:

	<u>Effective 12-2-57 to 10-3-59</u>
0 to 6 Months	\$ 52.50
6 to 12 "	55.00
12 to 18 "	57.50
18 to 24 "	60.00
24 to 36 "	65.00
After 36 Months	70.00

[fol. 59]

- b) Duties: Wrapping (including boarding and traying), sealing, scaling, pricing, labeling and displaying, and slicing of luncheon meats.

- c) Male Employment Guarantee: No male employee on the payroll as of the Monday following ratification of the contract shall lose his employment due to the hiring of a female wrapper; the Union shall be notified immediately of the employment of new female wrappers.

5. Effective January 1, 1958, three weeks of vacation with pay after 10 years of service.

d) Apprentice rates in both Service and Self-Service markets:

	Effective 10-7-57	Effective 10-6-58
0 to 6 Months	\$72.00	\$75.00
6 to 12 "	75.00	78.00
12 to 18 "	78.00	81.00
18 to 24 "	81.00	84.00
24 to 36 "	86.00	89.00

- e) A  $12\frac{1}{4}$  hourly increase in the premium for sixth day work and on the fifth day of a holiday week; in other words, the premium for such work is increased from \$1.00 per day to \$2.00 per day.

4. Female Wrappers:

- a) May be employed at the following wage schedule:

	Effective 12-2-57 to 10-3-59
0 to 6 Months	\$ 52.50
6 to 12 "	55.00
12 to 18 "	57.50
18 to 24 "	60.00
24 to 36 "	65.00
After 36 Months	70.00

[fol. 59]

- b) Duties: Wrapping (including boarding and trayng), sealing, scaling, pricing, labeling and displaying, and slicing of luncheon meats.

- c) Male Employment Guarantee: No male employee on the payroll as of the Monday following ratification of the contract shall lose his employment due to the hiring of a female wrapper; the Union shall be notified immediately of the employment of new female wrappers.

5. Effective January 1, 1958, three weeks of vacation with pay after 10 years of service.

6. Hours of Operation:

- All Locals except Local 189: Friday to 9:00 p.m.
- New Group 1 of Local 189: Friday to 9:00 p.m.
- New Group 2 of Local 189: Six permissible to 9:00 p.m.
- Groups 3, 3A and 4 of Local 189: No change in contract.

- e) No operations on Sundays or holidays.
- f) A male employee must be on duty at all hours that the market is open for the sale of meats.

If the contract provision prescribing the hours of market operating is not relaxed so as to permit at least one night of operation to 9:00 p.m. in all areas, then the company intends to litigate the legality of this contract restriction. We shall do so with genuine regret.

OUT 7. The cities in Local 189 to be re-grouped in accordance with the proposal made by the five employers on November 20, 1957.

8. Workday: Locals 262, 320, 546, 547, 571 and 638 and Group 1 in Local 189:

- a) Monday, Tuesday, Wednesday, Thursday and Saturday:  
9:00 a.m. to 6:00 p.m.
- b) Friday: 9:00 a.m. to 6:00 p.m., with the employer to have the option to work male employees after 6:00 p.m. at time and one-half.
- c) Employer may bring employees in at 8:00 a.m. provided time and one-half is paid for the hour between 8:00 and 9:00 a.m.

9. Workday: Group 2 in Local 189:

The workday in Group 2 of Local 189 to be changed effective on the Monday following ratification of the contract to an 8 hour workday to be worked between the hours of 8:00 a.m. to 9:00 p.m. with time off for meals in accordance with our offer of November 20, 1957.

Overtime may be worked at any time, except Sundays and holidays, at the discretion of the employer. Such overtime shall be paid for at time and one-half the employee's regular hourly rate for all hours worked:

- 1) After 8 hours of work in any workday;
- 2) After 6:00 p.m.;
- 3) Before 8:00 a.m.

Overtime shall not be pyramided; that is, paid for twice for the same hour worked. Thus, in calculating the overtime for any employee in any workweek, any hours for which overtime is payable under one of the above provisions shall not be used for recalculating overtime under any other provision.

10. The workweek in Local 262 Service markets to be reduced to 40 hours effective on the Monday following ratification of the contract.

Jewel Tea Co., Inc. Offer

-4-

November 22, 1957

11. Two 10 minute rest periods to be given in both Service and Self-Service markets daily.
12. Both the Service and Self-Service contracts to be modified to permit the sale outside of market operating hours of fresh poultry, processed on the premises, fresh pork sausage, and smoked butts, ribs and hocks; also, the company to have the right to sell frozen fresh meat specialty items processed off the premises, but not including frozen fresh cuts comparable to the standard fresh retail cuts.
13. The successors and assigns clause as previously agreed upon.



Sept mem 24 3/12

NY 31  
Consumer

## Expenditures For Meat

By Cities

5801415

FILED

MAY 28 1963

AT O'CLOCK  
ELBERT A. WAGNER, JR.  
CLERK



Average Amount of Money  
Spent Per Housekeeping  
Unit in 49 Large Cities  
During 1951

DOCKETED

[fol. 62]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANTS' EXHIBIT 31

American Meat Institute

Headquarters, Chicago • Members throughout the U. S.

## Foreword

The meat expenditure figures for 49 cities shown in this report have been compiled by the Bureau of Labor Statistics of the United States Department of Labor at the request of the American Meat Institute.

The basic source of the data is the comprehensive survey of total expenditures by "housekeeping consumer units" which was conducted in 1951 by the Bureau. A major purpose of this survey was to provide information to be used in revising the list of items and weighting factors used by that agency in the calculation of its monthly Consumers' Price Index.

The study also is expected to furnish useful and interesting information on the spending patterns of urban consumers at different income levels and of varying family size and composition. However, the results of such studies are not likely to be published for several years. For this reason, the Institute arranged for the tabulation of the figures on meat expenditures shown in this report. Comprehensive data of this sort have not been available up to this time, and it is hoped that publication of these figures will constitute a genuine service to the entire meat industry.

The complete survey conducted by the BLS included expenditure records for 10,800 families and about 1,700 single consumers in 91 cities. A Bureau report on the study states that "The family and single consumers to be included in this survey were carefully selected to be representative of all consumers in the urban areas of the United States."

It should be recognized that all figures based on sampling are never thoroughly accurate. However, such figures do provide reasonably accurate measures of differences between markets.

## Highlights

Estimated expenditures per housekeeping unit in 1951 for beef averaged the greatest in the eastern cities and lowest in the south. Most of the consumer units in the northern cities provided more dollars for beef than for pork. Among the beef, items consumers in all cities of the 49 spent the most for hamburger.

Veal disbursements per family were greatest generally in the cities with the largest population. In New Orleans, top city in veal expenditures, housekeepers spent twice as much for veal as the next leading city.

Amounts spent for pork in 1951 were greater relative to other meats in the south, with expenditures on smoked and cured pork per housekeeping unit being the highest in the southern cities.

Consumers in the large east and west coast cities spent the largest amounts for lamb. Lamb sales in the southern and central cities of the United States were lower generally.

Variety meat expenditures per household were higher in larger cities than in smaller cities in the survey.

Expenditures in 1951 for sausage and cold cuts were the lowest in the western cities and highest in the eastern industrial cities. Money spent for fresh pork sausage, in most instances, was high in the south and low in the west.

Family expenditure for canned meat showed no definite pattern between cities with Scranton the highest and New York City the lowest.

Total meat expenditure per consumer unit was estimated to have been the highest in northern industrial cities of the 49 surveyed and lowest in the south.

# Top Five of the 49 Cities in Expenditures on Various Meat Items

Total Beef <u>1/</u>	Round Steak	Hamburger Preground
Newark, N. J. Providence, R. I. Wilmington, Del. Cleveland, Ohio Chicago, Ill.	Wilmington, Del. Cleveland, Ohio San Francisco, Calif. Chicago, Ill. Pittsburgh, Pa.	Providence, R. I. Portland, Me. Sioux Falls, S. D. San Jose, Calif. Hartford, Conn.
Total Pork <u>2/</u>	Fresh Pork <u>2/</u>	Smoked & Cured
Wilmington, Del. Cincinnati, Ohio Norfolk, Va. Charleston, S. C. Chicago, Ill.	Norfolk, Va. Chicago, Ill. Hartford, Conn. Butte, Mont. Wilmington, Del.	Charleston, S. C. Atlanta, Ga. Jackson, Miss. Wilmington, Del. Cincinnati, Ohio
Total Veal	Total Lamb	Sausage & Cold Cuts
New Orleans, La. Newark, N. J. New York, N. Y. Philadelphia, Pa. Cleveland, Ohio	New York, N. Y. San Francisco, Calif. Newark, N. J. Boston, Mass. Providence, R. I.	Pittsburgh, Pa. Scranton, Pa. Cleveland, Ohio Wilmington, Del. Philadelphia, Pa.
Variety Meats	Canned Meats	Total Meat
New York, N. Y. Phoenix, Ariz. Wilmington, Del. Los Angeles, Calif.	Scranton, Pa. Portland, Me. Chicago, Ill. Charleston, W. Va.	Wilmington, Del. Newark, N. J. Cleveland, Ohio Chicago, Ill.

## on Various Meat Items

Total Beef <u>1/</u>	Round Steak	Hamburger Preground
Newark, N. J. Providence, R. I. Wilmington, Del. Cleveland, Ohio Chicago, Ill.	Wilmington, Del. Cleveland, Ohio San Francisco, Calif. Chicago, Ill. Pittsburgh, Pa.	Providence, R. I. Portland, Me. Sioux Falls, S. D. San Jose, Calif. Hartford, Conn.
Total Pork <u>2/</u>	Fresh Pork <u>2/</u>	Smoked & Cured
Wilmington, Del. Cincinnati, Ohio Norfolk, Va. Charleston, S. C. Chicago, Ill.	Norfolk, Va. Chicago, Ill. Hartford, Conn. Butte, Mont. Wilmington, Del.	Charleston, S. C. Atlanta, Ga. Jackson, Miss. Wilmington, Del. Cincinnati, Ohio
Total Veal	Total Lamb	Sausage & Cold Cuts
New Orleans, La. Newark, N. J. New York, N. Y. Philadelphia, Pa. Cleveland, Ohio	New York, N. Y. San Francisco, Calif. Newark, N. J. Boston, Mass. Providence, R. I.	Pittsburgh, Pa. Scranton, Pa. Cleveland, Ohio Wilmington, Del. Philadelphia, Pa.
Variety Meats	Canned Meats	Total Meat
New York, N. Y. Phoenix, Ariz. Wilmington, Del. Los Angeles, Calif. Cleveland, Ohio	Scranton, Pa. Portland, Me. Chicago, Ill. Charleston, W. Va. San Francisco, Calif.	Wilmington, Del. Newark, N. J. Cleveland, Ohio Chicago, Ill. Philadelphia, Pa.

1/ Excluding Beef Liver

2/ Excluding Fresh Pork Sausage

[fol. 65]



# Family Expenditures on Meat & Meat Products

City & Population	Total Beef 1/	Total Veal	Total Pork 2/	Total Lamb	Var. Meats	Sausage & Cold Cuts	Canned Meat	Total Meat 1951
<u>1,000,000 and over</u>								
Baltimore, Md.	\$ 96.07	\$10.19	\$100.40	\$ 8.81	\$ 5.64	\$41.75	\$12.44	\$275.30
Boston, Mass.	122.81	14.96	88.83	20.34	6.17	40.18	5.94	299.23
Chicago, Ill.	124.62	11.95	103.42	13.21	7.20	47.65	14.80	322.85
Cleveland, Ohio	125.05	17.05	98.06	7.43	9.39	58.60	7.53	323.11
Los Angeles, Calif.	96.09	3.99	67.99	13.69	9.71	24.05	8.30	223.82
Newark, N. J.	133.48	21.27	88.49	24.48	9.35	54.05	4.73	335.85
New York, N. Y.	123.94	18.16	63.50	32.32	12.87	36.49	3.55	290.83
Philadelphia, Pa.	114.09	18.15	97.77	14.68	7.75	57.47	8.88	318.79
Pittsburgh, Pa.	118.52	15.50	90.05	8.31	6.72	61.92	13.03	314.05
St. Louis, Mo.	104.69	8.41	102.82	2.45	6.17	48.14	4.14	276.82
San Francisco, Calif.	120.28	12.38	76.44	28.89	5.19	35.70	14.21	293.09
<u>240,000 to 1,000,000</u>								
Atlanta, Ga.	60.38	4.87	93.50	4.41	5.12	30.94	9.49	208.71
Birmingham, Ala.	56.19	3.10	84.40	4.90	5.71	33.80	8.29	196.39
Cincinnati, Ohio	89.62	3.10	108.72	3.91	6.66	46.80	5.91	264.72
Hartford, Conn.	112.25	6.92	100.50	10.42	7.72	52.24	7.55	297.60
Indianapolis, Ind.	83.96	3.54	99.70	*	6.23	32.67	5.91	232.01
Kansas City, Mo.	106.36	2.67	85.10	*	5.73	34.28	5.91	240.05
Louisville, Ky.	76.13	5.74	83.12	3.38	5.68	36.51	4.74	215.30
Miami, Fla.	97.60	5.96	94.12	3.97	4.84	30.42	9.51	246.42
Milwaukee, Wis.	99.65	10.13	94.18	4.44	5.25	50.39	9.28	273.32
Minneapolis, Minn.	117.28	4.85	72.59	*	5.12	33.16	13.04	246.04
Orleans, La.	71.71	43.37	68.27	*	7.64	30.42	8.30	229.71
Norfolk, Va.	63.28	7.97	107.15	2.45	2.58	40.41	9.49	233.33
Omaha, Neb.	122.36	4.44	89.17	2.45	9.18	34.50	8.28	270.38
Portland, Ore.	76.73	3.09	59.23	2.94	4.11	22.11	8.29	176.50
Providence, R. I.	126.82	8.41	81.30	18.61	6.69	44.40	8.88	295.11
Scranton, Pa.	115.32	13.25	100.21	6.86	3.64	58.99	18.37	316.64
Seattle, Wash.	99.43	2.65	76.37	7.84	6.59	21.88	6.50	221.26
Youngstown, Ohio	110.61	11.07	101.24	7.68	3.11	53.24	8.13	295.08
<u>30,500 to 240,000</u>								
Albuquerque, N. Mex.	90.14	3.97	69.33	3.42	5.15	25.64	13.03	210.68
Butte, Mont.	114.51	7.17	92.80	6.22	4.22	38.43	8.68	272.03
Canton, Ohio	101.80	12.00	76.07	6.77	6.66	52.45	10.68	260.43
Charleston, S. C.	76.59	9.49	105.14	*	6.93	42.97	13.08	254.20
Charleston, W. Va.	78.39	3.85	85.04	2.42	3.60	31.39	14.23	218.92
Charlotte, N. C.	72.35	7.31	81.87	*	7.12	34.09	8.81	211.55
Des Moines, Iowa	80.83	3.83	77.77	2.00	5.18	28.25	8.11	206.02
Evansville, Ind.	73.23	3.84	96.35	*	4.55	40.52	3.56	222.05
Huntington, W. Va.	60.87	.43	79.21	1.45	3.06	40.26	12.45	197.73
Jackson, Miss.	92.62	5.50	93.93	*	4.81	34.14	11.96	242.96
Little Rock, Ark.	74.70	2.85	88.13	*	6.61	25.63	9.46	207.38
Madison, Wis.	91.87	3.00	99.09	*	2.27	32.10	-	231.89
Oklahoma City, Okla.	79.25	3.00	78.46	*	6.31	28.07	3.97	199.06
Phoenix, Ariz.	84.15	3.10	71.94	3.42	12.13	31.46	8.29	214.49
Portland, Me.	102.97	4.69	78.22	7.25	3.09	29.49	14.83	240.54
Salt Lake City, Utah	82.03	3.44	68.05	6.27	5.10	22.81	13.63	201.33
San Jose, Calif.	104.87	10.20	61.85	16.07	4.06	30.88	10.68	230.12

[fol. 66]

# Family Expenditures

City & Population	Total Beef 1/	Total Veal	Total Pork 2/	Total Lamb	Var. Meats	Sausage & Cold Cuts	Can- ned Meat	Total Meat 1951
<u>1,000,000 and over</u>								
Baltimore, Md.	\$ 96.07	\$10.19	\$100.40	\$ 8.81	\$ 5.64	\$41.75	\$12.44	\$275.30
Boston, Mass.	122.61	14.96	88.83	20.34	6.17	40.18	5.94	299.23
Chicago, Ill.	124.62	11.95	103.42	13.21	6.72	47.65	14.80	322.85
Cleveland, Ohio	125.05	17.05	98.06	7.43	9.39	58.60	7.53	323.11
Los Angeles, Calif.	96.09	3.99	67.99	13.69	9.71	24.05	8.30	223.82
Newark, N. J.	133.48	21.27	88.49	24.48	9.35	54.05	4.73	335.85
New York, N. Y.	123.94	18.16	63.50	32.32	12.87	36.49	3.55	290.83
Philadelphia, Pa.	114.09	18.15	97.77	14.68	7.75	57.47	8.88	318.79
Pittsburgh, Pa.	118.52	15.50	90.05	8.31	6.72	61.92	13.03	314.05
St. Louis, Mo.	104.69	8.41	102.82	2.45	6.17	48.14	4.14	276.82
San Francisco, Calif.	120.28	12.38	76.44	28.89	5.19	35.70	14.21	293.09
<u>240,000 to 1,000,000</u>								
Atlanta, Ga.	60.38	4.87	93.50	4.41	5.12	30.94	9.49	208.71
Birmingham, Ala.	56.19	3.10	84.40	4.90	5.71	33.80	8.29	196.39
Cincinnati, Ohio	89.62	3.10	108.72	3.91	6.66	46.80	5.91	264.72
Hartford, Conn.	112.25	6.92	100.50	10.42	7.72	52.24	7.55	297.60
Indianapolis, Ind.	83.96	3.54	99.70	*	6.23	32.67	5.91	232.01
Kansas City, Mo.	106.36	2.67	85.10	*	5.73	34.28	5.91	240.05
Louisville, Ky.	76.13	5.74	83.12	3.38	5.68	36.51	4.74	215.30
Miami, Fla.	97.60	5.96	94.12	3.97	4.84	30.42	9.51	246.42
Milwaukee, Wis.	99.65	10.13	94.18	4.44	5.25	50.39	9.28	273.32
Minneapolis, Minn.	117.28	4.85	72.59	*	5.12	33.16	13.04	246.04
Orleans, La.	71.71	43.37	68.27	*	7.64	30.42	8.30	229.71
Norfolk, Va.	63.28	7.97	107.15	2.45	2.58	40.41	9.49	233.33
Omaha, Neb.	122.36	4.44	89.17	2.45	9.18	34.50	8.28	270.38
Portland, Ore.	76.73	3.09	59.23	2.94	4.11	22.11	8.29	176.50
Providence, R. I.	126.82	8.41	81.30	18.61	6.69	44.40	8.88	295.11
Scranton, Pa.	115.32	13.25	100.21	6.86	3.64	58.99	18.37	316.64
Seattle, Wash.	99.43	2.65	76.37	7.84	6.59	21.88	6.50	221.26
Youngstown, Ohio	110.61	11.07	101.24	7.68	3.11	53.24	8.13	295.08
<u>30,500 to 240,000</u>								
Albuquerque, N. Mex.	90.14	3.97	69.33	3.42	5.15	25.64	13.03	210.68
Butte, Mont.	114.51	7.17	92.80	6.22	4.22	38.43	8.68	272.03
Canton, Ohio	101.80	12.00	76.07	6.77	6.66	52.45	10.68	260.43
Charleston, S. C.	76.59	9.49	105.14	*	6.93	42.97	13.08	254.20
Charleston, W. Va.	78.39	3.85	85.04	2.42	3.60	31.39	14.23	218.92
Charlotte, N. C.	72.35	7.31	81.87	*	7.12	34.09	8.81	211.55
Des Moines, Iowa	80.88	3.83	77.77	2.00	5.18	28.25	8.11	206.02
Evansville, Ind.	73.23	3.84	96.35	*	4.55	40.52	3.56	222.05
Huntington, W. Va.	60.87	.43	79.21	1.45	3.06	40.26	12.45	197.73
Jackson, Miss.	92.62	5.50	93.93	*	4.81	34.14	11.96	242.96
Little Rock, Ark.	74.70	2.85	88.13	*	6.61	25.63	9.46	207.38
Madison, Wis.	91.87	3.00	99.09	*	2.27	32.10	3.56	231.89
Oklahoma City, Okla.	79.25	3.00	78.46	*	6.31	28.07	3.97	199.06
Phoenix, Ariz.	84.15	3.10	71.94	3.42	12.13	31.46	8.29	214.49
Portland, Me.	102.97	4.69	78.22	7.25	3.09	29.49	14.83	240.54
Salt Lake City, Utah	82.03	3.44	68.05	6.27	5.10	22.81	13.63	201.33
San Jose, Calif.	104.83	10.29	51.85	16.93	4.96	30.88	10.68	230.42
Sioux Falls, S. Dak.	108.44	1.99	68.77	*	5.29	37.03	5.12	226.64
Wichita, Kans.	85.26	2.58	71.67	*	2.70	28.41	5.46	196.08
Wilmington, Del.	125.16	12.99	110.43	13.20	10.09	58.49	10.25	340.61

1/ Excluding Beef Liver

2/ Excluding Fresh Pork Sausage

\*Insufficient Data.

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**SURVEY OF CONSUMER EXPENDITURES: Estimated Average  
Annual Expenditures for Specified Items of Meat by All**

City	Total Beef	Round Steak	Sirloin Steak	Other Steak	Rib Roast
<u>Population 1,000,000 and over</u>					
Baltimore, Md.	\$ 99.74	\$17.62	\$9.29	\$4.40	\$12.04
Boston, Mass.	128.01	15.01	9.69	16.46	8.12
Chicago, Ill.	129.86	20.55	11.26	13.70	13.01
Cleveland, Ohio	132.45	22.80	9.92	13.38	6.36
Los Angeles, Calif.	101.86	15.69	4.89	13.21	3.96
Newark, New Jersey	141.35	16.34	12.73	14.19	13.49
New York, N. Y.	132.67	19.57	12.73	18.10	10.60
Philadelphia, Pa.	119.87	18.10	10.28	11.26	12.53
Pittsburgh, Pa.	123.76	20.07	7.34	10.28	6.75
St. Louis, Mo.	108.89	16.15	9.29	8.32	6.75
San Francisco, Calif.	124.48	21.04	12.23	14.68	5.78
<u>Population 240,000 to 1,000,000</u>					
Atlanta, Ga.	63.53	9.29	3.92	5.39	4.34
Birmingham, Ala.	60.91	9.30	4.40	8.32	1.44
Cincinnati, Ohio	93.82	12.73	5.39	10.28	7.23
Hartford, Conn.	116.48	13.38	7.43	7.93	14.21
Indianapolis, Ind.	89.20	14.20	7.34	10.28	4.34
Kansas City, Mo.	111.60	15.66	6.86	9.29	7.23
Louisville, Ky.	80.33	10.28	6.36	6.36	4.34
Miami, Fla.	102.29	15.33	12.86	10.87	1.94
Milwaukee, Wis.	104.40	13.87	5.46	4.95	5.39
Minneapolis, Minn.	120.43	11.74	6.36	9.79	9.67
New Orleans, La.	75.91	10.28	6.36	10.28	2.41
Norfolk, Va.	65.37	12.23	4.89	3.42	3.37
Omaha, Neb.	127.60	13.21	9.29	5.87	10.60
Portland, Ore.	79.86	10.76	2.45	9.29	2.89
Providence, R. I.	131.54	13.21	13.70	14.19	5.78
Scranton, Pa.	118.47	17.13	6.85	9.79	16.67
Seattle, Wash.	102.58	8.81	5.87	10.28	7.71
Youngstown, Ohio	112.72	15.87	5.45	11.40	9.30
<u>Population of 30,500 to 240,000</u>					
Albuquerque, N. Mex.	\$ 93.81	\$17.13	\$6.85	\$ 4.89	\$6.26
Butte, Mont.	118.73	19.55	7.52	15.04	10.42
Canton, Ohio	107.00	14.53	5.81	8.24	6.68
Charleston, S. C.	82.49	15.23	3.05	6.09	2.01
Charleston, W. Va.	81.51	12.10	5.33	12.59	.96
Charlotte, N. C.	76.55	11.69	6.33	8.77	3.36
Des Moines, Iowa	84.04	12.03	6.51	12.03	2.98
Evansville, Ind.	75.84	6.72	3.88	7.27	.96
Huntington, W. Va.	62.95	7.75	3.88	3.39	2.86
Jackson, Miss.	96.92	17.77	3.05	10.66	9.05
Little Rock, Ark.	76.30	7.00	7.00	8.50	8.34
Madison, Wis.	93.95	10.17	6.29	9.69	9.06
Oklahoma City, Okla.	84.61	13.20	3.55	8.12	8.04
Phoenix, Ariz.	89.39	14.68	10.28	8.32	1.92
Portland, Me.	105.58	11.14	7.75	8.24	6.20
Salt Lake City, Utah	85.67	11.62	3.88	8.24	3.34
San Jose, Calif.	106.39	12.10	5.33	8.24	1.91
Sioux Falls, S. Dak.	112.19	19.79	9.64	5.59	5.02
Wichita, Kans.	87.96	18.01	7.20	7.72	2.06
Wilmington, Del.	133.20	26.39	11.16	10.15	10.56

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City	Total Beef	Round Steak	Sirloin Steak	Other Steak	Rib Roast
<u>Population 1,000,000 and over</u>					
Baltimore, Md.	\$ 99.74	\$17.62	\$9.29	\$4.40	\$12.04
Boston, Mass.	128.01	15.01	9.69	16.46	8.12
Chicago, Ill.	129.86	20.55	11.26	13.70	13.01
Cleveland, Ohio	132.45	22.80	9.92	13.38	6.36
Los Angeles, Calif.	101.86	15.69	4.89	13.21	3.96
Newark, New Jersey	141.35	16.64	12.73	14.19	13.49
New York, N. Y.	132.87	19.57	12.73	18.10	10.60
Philadelphia, Pa.	119.87	18.10	10.28	11.26	12.53
Pittsburgh, Pa.	123.76	20.07	7.34	10.28	6.75
St. Louis, Mo.	108.89	16.15	9.29	8.32	6.75
San Francisco, Calif.	124.48	21.04	12.23	14.68	5.78
<u>Population 240,000 to 1,000,000</u>					
Atlanta, Ga.	63.53	9.29	3.92	5.39	4.34
Birmingham, Ala.	60.91	9.30	4.40	8.32	1.44
Cincinnati, Ohio	93.82	12.73	5.39	10.20	7.23
Hartford, Conn.	116.48	13.38	7.43	7.93	14.21
Indianapolis, Ind.	89.20	14.20	7.34	10.28	4.34
Kansas City, Mo.	111.60	15.66	6.86	9.29	7.23
Louisville, Ky.	80.33	10.28	6.36	6.36	4.34
Miami, Fla.	102.29	15.33	12.86	10.87	1.94
Milwaukee, Wis.	104.40	13.87	5.46	4.95	5.39
Minneapolis, Minn.	120.43	11.74	6.36	9.79	8.67
New Orleans, La.	75.91	10.28	6.36	10.23	2.41
Norfolk, Va.	65.37	12.23	4.89	3.42	3.37
Omaha, Neb.	127.60	13.21	9.29	5.87	10.60
Portland, Ore.	79.36	10.76	2.45	9.29	2.89
Providence, R. I.	131.54	13.21	13.70	14.19	5.78
Scranton, Pa.	118.47	17.13	6.85	9.79	16.87
Seattle, Wash.	102.58	8.81	5.87	10.28	7.71
Youngstown, Ohio	112.72	15.87	5.45	11.40	9.30
<u>Population of 30,500 to 240,000</u>					
Albuquerque, N. Mex.	\$ 93.81	\$17.13	\$6.85	\$ 4.89	\$6.26
Butte, Mont.	118.73	19.55	7.52	15.04	10.42
Canton, Ohio	107.00	14.53	5.81	8.24	6.68
Charleston, S. C.	82.49	15.23	3.05	6.09	2.01
Charleston, W. Va.	81.51	12.10	5.33	12.59	.96
Charlotte, N. C.	76.55	11.69	6.33	8.77	3.36
Des Moines, Iowa	84.04	12.03	6.51	12.03	2.98
Evansville, Ind.	75.84	6.78	3.88	7.27	.96
Huntington, W. Va.	62.95	7.75	3.83	3.39	2.86
Jackson, Miss.	96.92	17.77	3.05	10.66	5.05
Little Rock, Ark.	76.30	7.00	7.00	8.50	8.34
Madison, Wis.	93.95	10.17	6.29	9.69	9.06
Oklahoma City, Okla.	84.61	13.20	3.55	8.12	6.04
Phoenix, Ariz.	39.39	14.68	10.28	6.32	1.92
Portland, Me.	105.58	11.14	7.75	8.24	6.20
Salt Lake City, Utah	85.67	11.62	3.88	8.24	3.34
San Jose, Calif.	106.39	12.10	5.33	8.24	1.91
Sioux Falls, S. Dak.	112.19	19.79	9.64	5.59	5.02
Wichita, Kans.	87.96	10.01	7.20	7.72	2.06
Wilmington, Del.	133.20	26.39	11.16	10.15	10.56

1/ Generally reported as side or quarter of beef.

# Housekeeping Consumer Units in 49 Large Cities Based On Expenditures Reported for One Week in Spring 1951

Chuck Roast	Other Roast	Hamburger Preground	Stew Boil'g Soup	Beef Liver	Other Beef	Unallo- cated 1/	Total Veal	Cut- let, etc.	Roast Stew Mt. Liver
\$14.07	\$11.16	\$18.59	\$6.80	\$3.67	\$2.10	—	\$10.19	\$7.55	\$2.64
9.14	19.24	36.37	7.22	5.20	1.56	—	14.96	7.73	7.23
16.99	14.08	21.17	9.71	5.24	2.63	\$ 1.52	11.95	7.99	3.95
17.65	10.78	31.27	10.73	7.40	2.11	—	17.05	10.16	6.89
9.71	13.10	25.81	3.25	5.77	1.57	—	3.99	3.11	.88
19.40	8.25	35.11	12.62	7.87	1.05	—	21.27	15.55	5.72
12.62	14.55	19.63	14.56	8.93	1.58	—	18.16	12.88	5.28
7.76	15.03	27.36	10.19	5.78	1.58	—	18.15	11.99	6.16
22.31	15.04	28.40	7.28	5.24	1.05	—	15.50	10.22	5.28
10.67	12.13	32.53	7.28	4.20	1.57	—	8.41	4.89	3.52
14.08	11.64	29.43	8.25	4.20	3.15	—	12.38	6.66	5.72
7.76	4.85	15.49	7.76	3.15	1.58	—	4.87	3.11	1.76
10.67	4.36	11.36	5.82	4.72	.52	—	3.10	2.66	.44
16.01	5.34	24.79	6.80	4.20	1.05	—	3.10	2.22	.88
13.23	3.43	36.49	8.34	4.23	4.23	3.59	6.92	5.54	1.38
12.62	2.91	26.34	4.36	5.24	1.57	—	3.54	1.33	2.21
23.77	5.82	28.40	7.76	5.24	1.57	—	2.67	2.67	—
14.56	4.37	26.34	1.94	4.20	1.58	—	5.74	2.66	3.08
14.68	7.34	24.63	7.34	4.69	2.61	—	5.96	3.68	2.28
19.12	8.82	31.79	5.88	4.75	2.11	2.26	10.13	4.16	5.97
16.01	13.10	26.85	3.39	3.15	1.57	19.80	4.85	1.77	3.08
9.71	7.76	17.56	6.30	4.20	1.05	—	43.37	27.09	16.28
9.71	8.25	14.98	4.85	2.09	1.58	—	7.97	5.33	2.64
20.86	17.46	34.59	8.25	5.24	1.57	.66	4.44	3.56	.88
7.23	8.73	29.43	4.85	2.63	1.05	—	3.09	1.77	1.32
16.99	0.73	44.40	8.25	4.72	1.57	—	8.41	4.89	3.52
18.44	5.34	34.08	6.30	3.15	.52	—	13.25	5.33	7.92
16.98	14.55	27.36	5.82	3.15	1.06	.99	2.65	1.77	.88
21.07	7.35	32.30	6.87	2.11	.52	.48	11.07	7.39	3.68
\$13.10	\$13.58	\$23.75	\$ 4.37	\$ 3.67	\$ .21	—	\$ 3.97	\$ .89	\$ 3.08
3.96	17.31	22.38	6.93	4.22	1.58	\$ 9.32	7.17	2.87	4.30
17.80	6.25	32.78	8.66	5.20	1.05	—	12.00	9.45	2.55
12.48	7.00	20.16	9.49	5.90	1.03	—	9.49	7.99	1.50
12.51	3.85	26.13	3.36	3.12	1.56	—	3.85	3.00	.85
10.18	7.28	14.50	9.71	4.21	.52	—	7.31	5.18	2.13
11.38	5.94	24.99	3.96	3.16	1.06	—	3.33	2.40	1.43
13.96	4.33	25.10	6.25	2.61	.52	4.18	3.84	1.71	2.13
6.25	5.78	25.10	4.81	2.08	1.05	—	.43	.43	—
9.49	10.99	19.09	11.99	4.30	.53	—	5.50	2.50	3.00
7.89	8.88	22.56	2.96	1.60	1.07	—	2.85	1.43	1.42
14.91	8.66	29.20	3.37	2.06	.52	—	3.00	1.72	1.28
10.49	7.00	22.27	5.50	5.36	1.08	—	3.00	3.00	—
15.04	4.37	21.18	6.79	5.24	1.57	—	3.10	2.22	.88
11.55	6.25	43.54	6.74	2.61	1.56	—	4.69	1.72	2.97
6.25	11.55	30.74	4.33	3.64	2.08	—	3.44	2.58	.86
9.63	13.96	37.90	10.10	1.56	.16	5.50	10.29	9.02	1.27
12.09	8.50	40.63	3.00	3.75	1.00	—	1.99	1.99	—
						—	2.58	2.06	.52

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# On Expenditures Reported for One Week in Spring 1951

Chick Roast	Other Roast	Hamburger Preground	Stew Boiling Soup	Beef Liver	Other Beef	Unallo- cated 1/	Total Veal	Out- let, etc.	Roast Stew Mt. Liver
\$14.07	\$11.16	\$18.59	\$6.80	\$3.67	\$2.10	—	\$10.19	\$7.55	\$2.64
9.14	19.24	36.37	7.22	5.20	1.56	—	14.96	7.73	7.23
15.99	14.08	21.17	9.71	5.24	2.63	1.52	11.95	7.99	3.96
17.65	10.78	31.27	10.73	7.40	2.11	—	17.05	10.16	6.89
9.71	13.10	25.81	3.25	5.77	1.57	—	3.99	3.11	.88
19.40	8.25	35.11	12.62	7.87	1.05	—	21.27	15.55	5.72
12.62	14.55	19.63	14.56	8.93	1.58	—	13.16	12.88	5.28
7.76	15.03	27.36	10.19	5.78	1.58	—	18.15	11.99	6.16
22.31	15.04	28.40	7.28	5.24	1.05	—	15.50	10.22	5.28
10.67	12.13	32.53	7.28	4.20	1.57	—	8.41	4.89	3.52
14.08	11.64	29.43	8.25	4.20	3.15	—	12.38	6.66	5.72
7.76	4.85	15.49	7.76	3.15	1.58	—	4.87	3.11	1.76
10.67	4.36	11.36	5.82	4.72	.52	—	3.10	2.66	.44
16.01	5.34	24.79	6.80	4.20	1.05	—	3.10	2.22	.88
13.23	3.43	36.48	8.34	4.23	4.23	3.59	6.92	5.54	1.38
12.62	2.61	26.34	4.36	5.24	1.57	—	3.54	1.33	2.21
23.77	5.62	28.40	7.76	5.24	1.57	—	2.67	2.67	—
14.56	4.37	26.34	1.94	4.20	1.58	—	5.74	2.66	3.08
14.68	7.34	24.63	7.34	4.69	2.61	—	5.96	3.68	2.28
19.12	8.82	31.79	5.88	4.75	2.11	2.26	10.13	4.16	5.97
16.01	13.10	26.85	3.39	3.15	1.57	19.80	4.85	1.77	3.08
9.71	7.76	17.56	6.30	4.20	1.05	—	43.37	27.09	16.28
9.71	8.25	14.98	4.85	2.09	1.58	—	7.97	5.33	2.64
20.86	17.46	34.59	8.25	5.24	1.57	.66	4.44	3.56	.88
7.23	8.73	29.43	4.85	2.63	1.05	—	3.09	1.77	1.32
16.99	8.78	44.40	8.25	4.72	1.57	—	8.41	4.89	3.52
18.44	5.34	34.08	6.30	3.15	.52	—	13.25	5.33	7.92
16.98	14.55	27.36	5.82	3.15	1.06	.99	2.65	1.77	.88
21.07	7.35	32.30	6.87	2.11	.52	.48	11.07	7.39	3.68
\$13.10	\$13.58	\$23.75	\$ 4.37	\$ 3.67	\$ .21	—	\$ 3.97	\$ .89	\$ 3.08
3.96	17.31	22.38	6.93	4.22	1.58	\$ 9.32	7.17	2.87	4.90
17.80	6.25	32.78	8.56	5.20	1.05	—	12.00	9.45	2.55
12.48	7.00	20.16	9.49	5.90	1.03	—	9.49	7.99	1.50
12.51	3.85	26.13	3.36	3.12	1.56	—	3.85	3.00	.85
10.19	7.28	14.50	9.71	4.21	.52	—	7.31	5.18	2.13
11.38	5.94	24.99	3.96	3.16	1.06	—	3.33	2.40	1.43
13.96	4.33	25.10	6.25	2.61	.52	4.18	3.84	1.71	2.13
6.25	5.78	25.10	4.81	2.08	1.05	—	.43	.43	—
9.49	10.99	19.09	11.99	4.30	.53	—	5.50	2.50	3.00
7.89	8.88	22.56	2.96	1.60	1.07	—	2.85	1.43	1.42
14.91	8.66	29.20	3.37	2.08	.52	—	3.00	1.72	1.28
10.49	7.00	22.27	5.50	5.36	1.08	—	3.00	3.00	—
15.04	4.37	21.18	6.79	5.24	1.57	—	3.10	2.22	.88
11.55	6.25	43.54	6.74	2.61	1.56	—	4.69	1.72	2.97
6.25	11.55	30.74	4.33	3.64	2.08	—	3.44	2.58	.86
9.63	13.96	37.90	10.10	1.56	.16	5.50	10.29	9.02	1.27
14.99	8.50	40.83	3.00	3.75	1.03	—	1.96	1.99	—
19.97	1.54	24.10	3.58	2.70	1.08	—	2.58	2.06	.52
15.48	14.99	27.57	4.99	8.04	2.14	1.73	12.99	11.49	1.50

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**SURVEY OF CONSUMER EXPENDITURES: Estimated Average  
Annual Expenditures for Specified Items of Meat by All**

City	PORK, FRESH			
	Total Fresh Pork	Chops Center	Chops End	Loin Roast
<u>Population 1,000,000 and over</u>				
Baltimore, Md.	\$ 52.32	\$16.06	\$ 6.02	\$11.54
Boston, Mass.	44.49	17.22	3.94	8.37
Chicago, Ill.	59.03	21.07	4.02	16.56
Cleveland, Ohio	51.50	17.91	4.10	11.25
Los Angeles, Calif.	30.76	13.05	2.51	5.52
Newark, N. J.	52.62	14.55	5.01	14.04
New York	36.87	11.03	3.51	10.04
Philadelphia, Pa.	53.41	13.05	4.51	8.53
Pittsburgh, Pa.	50.76	22.08	2.51	13.05
St. Louis, Mo.	53.70	15.55	5.52	9.53
San Francisco, Calif.	41.06	13.05	3.51	6.02
<u>Population 240,000 to 1,000,000</u>				
Atlanta, Ga.	37.74	13.54	1.51	5.01
Birmingham, Ala.	40.01	13.55	3.51	4.02
Cincinnati, Ohio	54.57	18.06	3.01	14.04
Hartford, Conn.	57.46	11.25	4.60	10.93
Indianapolis, Ind.	50.65	17.56	7.53	7.53
Kansas City, Mo.	36.87	12.54	4.02	6.52
Louisville, Ky.	42.10	16.06	2.00	6.52
Miami, Fla.	36.79	10.21	5.10	8.16
Milwaukee, Wis.	50.26	13.81	3.58	19.45
Minneapolis, Minn.	37.17	11.54	4.02	12.04
New Orleans, La.	31.14	15.55	3.01	3.51
Norfolk, Va.	59.60	19.07	2.51	7.53
Omaha, Neb.	44.01	15.05	8.02	5.52
Portland, Ore.	26.59	10.04	2.51	5.52
Providence, R. I.	40.20	12.04	5.01	11.03
Saranton, Pa.	52.85	17.05	5.01	15.05
Seattle, Wash.	37.51	8.02	4.02	6.54
Youngstown, Ohio	51.05	23.58	3.07	9.21
<u>Population of 30,500 to 240,000</u>				
Albuquerque, N. Mex.	\$ 34.43	\$11.03	\$ 3.51	\$ 7.03
Butte, Mont.	57.04	11.46	5.21	27.09
Canton, Ohio	43.70	15.25	3.94	10.62
Charleston, S. C.	43.30	10.65	3.73	3.73
Charleston, W. Va.	42.99	14.76	.99	7.38
Charlotte, N. C.	40.07	18.82	1.98	3.97
Des Moines, Iowa	37.88	19.28	1.56	5.74
Evansville, Ind.	49.53	11.81	3.44	5.90
Huntington, W. Va.	38.99	10.33	4.43	5.90
Jackson, Miss.	36.91	11.19	6.39	2.67
Little Rock, Ark.	37.21	15.67	1.57	6.79
Madison, Wis.	47.51	10.33	3.44	20.18
Oklahoma City, Okla.	32.09	12.79	3.20	3.20
Phoenix, Ariz.	32.82	9.03	4.02	3.02
Portland, Me.	34.77	7.87	3.44	10.82
Salt Lake City, Utah	32.26	7.30	3.94	8.37
San Jose, Calif.	35.12	12.30	2.95	1.96
Sioux Falls, S. Dak.	42.16	20.78	3.20	7.46
Wichita, Kans.	33.90	15.16	4.34	3.25
Wichita, Kans.	2/55.01	25.60	2.67	11.19

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City	Total Fresh Pork	Chops Center	Chops End	Loin Roast
<u>Population 1,000,000 and over</u>				
Baltimore, Md.	\$ 52.32	\$16.06	\$ 6.02	\$11.54
Boston, Mass.	44.49	17.22	3.94	8.37
Chicago, Ill.	59.03	21.07	4.02	16.56
Cleveland, Ohio	51.50	17.91	4.10	11.25
Los Angeles, Calif.	30.76	13.05	2.51	5.52
Newark, N. J.	52.62	14.55	5.01	14.04
New York	36.87	11.03	3.51	10.04
Philadelphia, Pa.	53.41	13.05	4.51	8.53
Pittsburgh, Pa.	50.76	22.08	2.51	13.05
St. Louis, Mo.	53.70	15.55	5.52	9.53
San Francisco, Calif.	41.06	13.05	3.51	6.02

Population 240,000 to 1,000,000

Atlanta, Ga.	37.74	13.54	1.51	5.01
Birmingham, Ala.	40.81	13.53	3.51	4.02
Cincinnati, Ohio	54.57	16.06	3.01	14.04
Hartford, Conn.	57.46	11.25	4.60	18.93
Indianapolis, Ind.	50.65	17.56	7.53	7.53
Kansas City, Mo.	36.87	12.54	4.02	6.52
Louisville, Ky.	42.10	16.06	2.00	6.52
Miami, Fla.	36.79	10.21	5.10	8.16
Milwaukee, Wis.	50.26	13.81	3.58	19.45
Minneapolis, Minn.	37.17	11.54	4.02	12.04
New Orleans, La.	31.14	15.55	3.01	3.51
Norfolk, Va.	59.60	19.07	2.51	7.53
Omaha, Neb.	44.01	15.05	8.02	5.52
Portland, Ore.	26.59	10.04	2.51	5.52
Providence, R. I.	40.20	12.04	5.01	11.03
Scranton, Pa.	52.85	17.05	5.01	15.05
Seattle, Wash.	37.51	8.02	4.02	6.54
Youngstown, Ohio	51.05	23.53	3.07	9.21

Population of 30,500 to 240,000

Albuquerque, N. Mex.	\$ 34.43	\$11.03	\$ 3.51	\$ 7.03
Butte, Mont.	57.04	11.46	5.21	27.09
Canton, Ohio	43.70	15.25	3.94	10.62
Charleston, S. C.	43.30	18.65	3.73	3.73
Charleston, W. Va.	42.99	14.76	.99	7.38
Charlotte, N. C.	40.07	18.82	1.98	3.97
Des Moines, Iowa	37.88	19.28	1.56	5.74
Evansville, Ind.	49.53	11.61	3.44	5.90
Huntington, W. Va.	38.99	10.33	4.43	5.00
Jackson, Miss.	36.91	11.19	6.39	2.67
Little Rock, Ark.	37.21	15.67	1.57	6.79
Madison, Wis.	47.51	10.33	3.44	20.18
Oklahoma City, Okla.	32.09	12.79	3.20	3.20
Phoenix, Ariz.	32.82	9.03	4.02	6.02
Portland, Me.	34.77	7.67	3.44	10.22
Salt Lake City, Utah	32.26	7.38	3.94	8.37
San Jose, Calif.	35.12	12.30	2.95	1.96
Sioux Falls, S. Dak.	42.16	20.78	3.20	7.46
Wichita, Kans.	33.90	15.16	4.34	3.25
Wilmington, Del.	2/55.01	25.60	2.67	11.19

2/ Includes \$1.04 unallocated expenditures, generally reported as whole pork.  
3/ Includes \$1.17 unallocated expenditures, generally reported as whole pork.



**Housekeeping Consumer Units in 49 Large Cities Based  
On Expenditures Reported for One Week in Spring 1951**

PORK, FRESH			PORK, SMOKED OR CURED					
Fresh Ham	Fresh Sausage	Other Fresh Pork	Tot. pork Smoked Cured	Ham Whole Sliced	Picnic Shoulder	Bacon	Salt Pork Etc.	Other
\$ 5.01	\$ 6.66	\$ 7.03	\$54.74	\$24.65	\$ 6.57	\$19.14	\$ 1.63	\$ 2.75
2.46	4.63	7.87	48.97	18.53	11.23	17.01	1.07	1.13
4.51	4.89	7.08	50.23	18.08	2.74	22.86	2.16	4.39
3.58	8.52	6.14	55.08	25.19	5.90	19.65	2.20	2.14
.50	2.66	6.52	39.89	13.15	2.75	21.26	.54	2.19
8.02	7.99	3.01	43.86	21.91	3.29	16.48	.54	1.64
3.51	5.77	3.01	32.40	12.05	1.64	14.88	1.09	2.74
13.54	9.76	4.02	54.12	23.01	4.39	21.80	1.63	3.29
3.51	7.10	2.51	46.39	19.72	1.10	23.39	.54	2.64
6.52	7.55	9.03	56.67	21.36	1.64	26.05	3.79	3.83
7.52	4.44	6.52	39.82	13.15	2.19	23.40	.54	.54
1.51	10.65	5.52	66.41	21.91	4.93	28.71	9.22	1.64
2.00	10.21	7.52	53.20	9.86	1.64	28.17	10.84	3.29
5.01	8.43	6.02	62.58	20.27	4.93	30.83	1.62	4.93
7.67	10.41	4.60	53.45	26.39	4.29	17.53	1.10	2.14
2.51	7.99	7.53	57.04	13.15	7.12	32.96	1.62	2.19
6.02	5.77	2.00	54.00	20.26	5.47	24.99	1.09	2.19
3.01	7.99	6.52	49.01	11.50	4.93	26.05	3.79	2.74
2.55	5.15	5.62	62.48	20.35	11.78	26.57	1.64	2.14
.51	4.73	8.18	48.65	26.25	2.68	13.82	.55	5.35
2.51	3.55	3.31	33.97	18.62	3.29	15.42	.54	1.10
4.02	3.55	1.50	40.68	17.54	3.83	10.10	8.67	.54
6.02	12.43	12.04	59.98	20.82	5.47	24.45	6.50	2.74
1.50	4.89	9.03	50.05	14.25	1.64	29.24	1.09	3.83
1.51	4.00	3.01	36.64	10.40	4.93	19.67	.54	1.10
1.51	7.10	3.51	48.20	18.08	10.40	17.55	1.62	.55
4.02	10.21	1.51	57.57	31.77	2.74	15.95	.54	6.57
5.01	4.39	9.03	48.75	16.98	4.93	20.21	1.09	.54
2.04	7.57	5.63	57.76	31.08	—	21.79	2.75	2.14
\$ 3.51	\$ 5.33	\$ 4.02	\$40.23	\$ 8.76	\$ 2.19	\$27.64	\$ .54	\$ 1.10
1.05	7.54	4.69	43.30	18.35	4.20	18.59	1.11	1.05
2.46	9.26	1.97	41.63	18.53	3.37	18.07	.53	1.13
3.20	9.73	4.26	71.57	16.91	11.79	30.27	9.02	3.58
6.39	8.42	5.05	50.47	16.29	—	29.23	2.14	2.81
1.49	7.37	5.94	49.67	14.82	2.85	25.52	5.34	1.14
1.56	4.53	5.21	44.42	17.30	7.86	17.57	.17	1.57
5.42	12.63	10.33	3/59.45	18.53	5.06	29.76	2.69	2.24
.40	8.00	9.84	48.22	8.98	6.74	20.16	3.22	1.12
4.26	9.20	3.20	66.22	17.42	4.10	32.39	11.28	1.03
3.13	7.97	2.08	58.89	24.56	2.09	25.01	7.18	.05
.49	4.21	8.86	55.79	23.58	11.23	15.95	.53	4.50
1.60	7.58	3.72	53.95	19.98	3.08	27.61	2.25	1.03
.50	6.22	7.03	45.34	18.08	—	21.80	1.63	3.83
2.46	3.79	6.39	47.24	6.74	19.66	17.02	1.14	1.68
5.41	4.21	2.95	40.00	15.72	5.61	17.01	.53	1.13
2.95	4.63	10.33	21.36	1.68	—	17.54	2.14	—
1.07	3.25	6.40	29.86	4.10	6.66	18.59	—	.51
2.24	2.10	1.42	42.06	10.59	4.04	28.13	—	.20

# On Expenditures Reported for One Week in Spring 1951

PORK, FRESH			PORK, SMOKED OR CURED					
Fresh Ham	Fresh Sausage	Other Fresh Pork	Tot. pork Smoked Cured	Ham Whole Sliced	Picnic Shoulder	Bacon	Salt Pork Etc.	Other
\$ 5.01	\$ 6.66	\$ 7.03	\$54.74	\$24.65	\$ 6.57	\$19.14	\$ 1.63	\$ 2.75
2.46	4.63	7.87	48.97	18.53	11.23	17.01	1.07	1.13
4.51	4.89	7.03	50.23	18.08	2.74	22.86	2.16	4.39
3.58	8.52	6.14	55.08	25.19	5.90	19.65	2.20	2.14
.50	2.66	6.52	39.89	13.15	2.75	21.26	.54	2.19
6.02	7.99	3.01	43.86	21.91	3.29	16.48	.54	1.04
3.51	5.77	3.01	32.40	12.05	1.64	14.88	1.09	2.74
13.54	9.76	4.02	54.12	23.01	4.39	21.80	1.63	3.29
3.51	7.10	2.51	46.39	19.72	1.10	23.39	.54	1.64
6.52	7.55	9.03	56.67	21.36	1.64	26.05	3.79	3.83
7.52	4.44	6.52	39.82	13.15	2.19	23.40	.54	.54
1.51	10.65	5.52	66.41	21.91	4.93	28.71	9.22	1.64
2.00	10.21	7.52	53.20	9.86	1.64	20.17	10.84	3.29
5.01	8.43	6.02	62.58	20.27	4.93	30.33	1.62	4.93
7.67	10.41	4.60	53.45	20.39	4.29	17.53	1.10	2.14
2.51	7.99	7.53	57.04	13.15	7.12	32.96	1.62	2.19
6.02	5.77	2.00	54.00	20.26	5.47	24.99	1.09	2.19
3.01	7.99	6.52	49.01	11.50	4.93	26.05	3.79	2.74
2.55	5.15	5.62	62.48	20.35	11.78	26.57	1.64	2.14
.51	4.73	8.18	48.65	26.25	2.68	13.82	.55	5.35
2.51	3.55	3.51	33.97	18.62	3.29	15.42	.54	1.10
4.02	3.55	1.50	40.68	17.54	3.83	10.10	3.67	.54
6.02	12.43	12.04	59.98	20.32	5.47	24.45	6.50	2.74
1.50	4.89	9.03	50.05	14.25	1.64	29.24	1.09	3.83
1.51	4.00	3.01	36.64	10.40	4.93	19.67	.54	1.10
1.51	7.10	3.51	48.20	18.08	10.40	17.55	1.62	.55
4.02	10.21	1.51	57.87	31.77	2.74	15.95	.54	6.57
5.01	4.39	9.03	43.75	16.98	4.93	20.21	1.09	.54
2.04	7.57	5.63	57.76	31.08	—	21.79	2.75	2.14
\$ 3.51	\$ 5.33	\$ 4.02	\$40.23	\$ 8.76	\$ 2.19	\$27.64	\$ .54	\$ 1.10
1.05	7.54	4.69	43.30	18.35	4.20	18.59	1.11	1.05
2.46	9.26	1.97	41.63	18.53	3.37	18.07	.53	1.13
3.20	9.73	4.26	71.57	16.91	11.77	30.27	9.02	3.58
6.39	6.42	5.05	50.47	16.29	—	29.23	2.14	2.81
1.49	7.37	5.94	49.67	14.82	2.85	25.52	5.34	1.14
1.56	4.53	5.21	44.42	17.30	7.86	17.52	.17	1.57
5.42	12.63	10.33	3/59.45	18.53	5.06	29.76	2.69	2.24
.49	8.00	9.84	48.22	8.98	6.74	28.16	3.22	1.12
4.26	9.20	3.20	66.22	17.42	4.10	32.39	11.28	1.03
3.13	7.97	2.08	58.89	24.56	2.09	25.01	7.18	.05
.49	4.21	8.86	55.79	23.58	11.23	15.95	.53	4.50
1.60	7.58	3.72	53.95	19.98	3.08	27.61	2.25	1.03
.50	6.22	7.03	45.34	18.08	—	21.80	1.63	3.83
2.46	3.79	6.39	47.24	6.74	19.66	17.02	2.14	1.68
5.41	4.21	2.95	40.00	15.72	5.61	17.01	.53	1.13
2.95	4.63	10.33	21.36	1.68	—	17.54	2.14	—
1.07	3.25	6.40	29.86	4.10	6.66	18.59	—	.51
4.34	5.19	1.62	42.96	10.59	4.04	28.13	—	.20
4.80	8.11	1.60	63.53	34.33	1.54	24.43	1.69	1.54

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**SURVEY OF CONSUMER EXPENDITURES: Estimated Average  
Annual Expenditures for Specified Items of Meat by All**

City	LAMB		
	Total Lamb	Rib Chops	Loin Chops
<u>Population 1,000,000 and over</u>			
Baltimore, Md.	\$ 8.81	\$ 1.95	\$ 2.45
Boston, Mass.	20.34	2.42	5.33
Chicago, Ill.	13.21	2.45	3.42
Cleveland, Ohio	7.43	2.97	.49
Los Angeles, Calif.	13.69	1.95	3.42
Newark, N. J.	24.48	4.41	5.39
New York, N. Y.	32.32	9.80	7.34
Philadelphia, Pa.	14.68	1.95	3.42
Pittsburgh, Pa.	6.31	1.47	1.55
St. Louis, Mo.	2.45	.49	.49
San Francisco, Calif.	23.89	6.36	5.39
<u>Population 240,000 to 1,000,000</u>			
Atlanta, Ga.	\$ 4.41	\$ .98	\$ .98
Birmingham, Ala.	4.90	.49	.49
Cincinnati, Ohio	3.91	—	—
Hartford, Conn.	10.42	3.97	3.97
Indianapolis, Ind.	.	—	—
Kansas City, Mo.	.	—	—
Louisville, Ky.	3.38	.49	.19
Miami, Fla.	3.97	1.00	2.48
Milwaukee, Wis.	4.44	.49	—
Minneapolis, Minn.	.	—	—
New Orleans, La.	.	—	—
Norfolk, Va.	2.45	.49	.49
Omaha, Neb.	2.45	.49	.49
Portland, Ore.	2.94	.49	.49
Providence, R. I.	18.61	2.45	2.94
Scranton, Pa.	6.86	.98	1.47
Seattle, Wash.	7.84	.49	2.94
Youngstown, Ohio	7.68	1.98	.25
<u>Population of 30,500 to 240,000</u>			
Albuquerque, N. Mex.	\$ 3.42	\$ 1.95	\$ .49
Butte, Mont.	6.22	—	2.00
Canton, Ohio	6.77	.48	2.42
Charleston, S. C.	.	—	—
Charleston, W. Va.	2.42	—	.97
Charlotte, N. C.	.	—	—
Des Moines, Iowa	2.00	—	—
Evansville, Ind.	.	—	—
Huntington, W. Va.	1.45	.48	—
Jackson, Miss.	.	—	—
Little Rock, Ark.	.	—	—
Madison, Wis.	.	—	—
Oklahoma City, Okla.	.	—	—
Phoenix, Ariz.	3.42	.49	.49
Portland, Me.	7.25	2.42	1.45
Salt Lake City, Utah	6.27	.48	.48
San Jose, Calif.	16.93	2.42	2.42
Sioux Falls, S. Dak.	.	—	—

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	Lamb	Chops	Chops
<u>Population 1,000,000 and over</u>			
Baltimore, Md.	\$ 8.61	\$ 1.95	\$ 2.45
Boston, Mass.	20.34	2.42	5.33
Chicago, Ill.	13.21	2.45	3.42
Cleveland, Ohio	7.43	2.97	.49
Los Angeles, Calif.	13.69	1.95	3.42
Newark, N. J.	24.48	4.41	5.39
New York, N. Y.	32.32	9.80	7.34
Philadelphia, Pa.	14.68	1.95	3.42
Pittsburgh, Pa.	8.31	1.47	1.95
St. Louis, Mo.	2.45	.49	.49
San Francisco, Calif.	23.89	6.36	5.39
<u>Population 240,000 to 1,000,000</u>			
Atlanta, Ga.	\$ 4.41	\$ .93	\$ .98
Birmingham, Ala.	4.90	.49	.49
Cincinnati, Ohio	3.91	—	—
Hartford, Conn.	10.42	3.97	3.97
Indianapolis, Ind.	.	—	—
Kansas City, Mo.	.	—	—
Louisville, Ky.	3.38	.49	.19
Miami, Fla.	3.97	1.00	2.48
Milwaukee, Wis.	4.44	.49	—
Minneapolis, Minn.	.	—	—
New Orleans, La.	.	—	—
Norfolk, Va.	2.45	.49	.49
Omaha, Neb.	2.45	.49	.49
Portland, Ore.	2.94	.49	.49
Providence, R. I.	18.61	2.45	2.94
Scranton, Pa.	6.86	.98	1.47
Seattle, Wash.	7.84	.49	2.94
Youngstown, Ohio	7.68	1.98	.25
<u>Population of 30,500 to 240,000</u>			
Albuquerque, N. Mex.	\$ 3.42	\$ 1.95	\$ .49
Butte, Mont.	6.22	—	2.00
Canton, Ohio	6.77	.48	2.42
Charleston, S. C.	.	—	—
Charleston, W. Va.	2.42	—	.97
Charlotte, N. C.	.	—	—
Des Moines, Iowa	2.00	—	—
Evansville, Ind.	.	—	—
Huntington, W. Va.	1.45	.48	—
Jackson, Miss.	.	—	—
Little Rock, Ark.	.	—	—
Madison, Wis.	.	—	—
Oklahoma City, Okla.	.	—	—
Phoenix, Ariz.	3.42	.49	.49
Portland, Me.	7.25	2.42	1.45
Salt Lake City, Utah	6.27	.48	.48
San Jose, Calif.	15.93	2.42	2.42
Sioux Falls, S. Dak.	.	—	—
Wichita, Kansas	.	—	—
Wilmington, Del.	13.20	1.02	3.04

[fol. 71]

• Insufficient reports for a valid estimate.

Housekeeping Consumer Units in 49 Large Cities Based  
Expenditures Reported for One Week in Spring 1951

LAMB		OTHER MEATS			CANNED MEATS	
Leg	Breast Etc.	Tongue Heart Etc.	Franks Smoked Sausage	Cold Cuts	Lunch Meat	Other Canned
\$ 3.92	\$ .49	\$ 1.97	\$12.09	\$23.01	\$ 4.74	\$ 7.70
8.71	3.08	.97	15.88	19.67	2.97	2.97
4.89	2.45	1.96	12.08	30.68	2.36	12.44
2.48	1.49	1.99	17.64	32.44	3.43	4.05
4.40	3.92	3.94	8.24	13.15	4.74	3.56
9.79	4.89	1.48	12.64	93.42	2.36	2.37
9.30	5.88	3.94	10.99	19.73	1.19	2.36
5.39	3.92	1.97	12.64	35.07	3.55	5.33
3.42	1.47	1.48	10.99	43.63	7.70	5.33
.49	.98	1.97	14.83	25.76	2.36	1.78
11.75	5.39	.99	13.13	18.08	4.14	10.07
\$ 1.47	\$ .98	\$ 1.97	\$11.53	\$ 8.76	\$ 2.97	\$ 6.52
2.94	.98	.99	11.54	12.05	2.37	5.92
3.42	.49	2.46	7.69	30.68	2.36	3.55
—	2.48	3.49	15.98	25.85	.53	6.97
—	—	.99	9.34	15.34	3.55	2.36
—	—	.49	11.53	16.98	3.55	2.36
2.45	.25	1.48	9.34	19.18	1.19	3.55
—	.49	.15	9.90	15.37	2.37	7.14
3.46	.49	.50	11.57	34.09	3.43	5.80
—	—	1.97	10.43	19.18	4.74	8.30
—	—	3.44	10.43	16.44	1.78	6.52
.96	.49	.49	13.18	14.90	4.74	4.75
—	1.47	3.94	11.53	18.08	4.14	4.14
.98	.98	1.48	10.43	7.68	4.74	3.55
10.28	2.94	1.97	15.93	21.37	4.74	4.14
2.94	1.47	.49	11.53	37.25	11.85	6.52
2.94	1.47	3.44	4.94	12.05	2.36	4.14
2.48	2.97	1.00	12.68	32.99	1.16	6.97
—	\$ .98	\$ 1.48	\$10.99	\$ 9.32	\$ 5.33	\$ 7.70
4.02	.20	—	13.80	17.09	4.05	4.63
2.42	1.45	1.46	12.04	31.15	8.31	2.37
—	—	1.03	17.75	15.49	7.39	5.69
1.45	—	.49	9.31	13.66	7.70	6.53
—	—	2.91	12.01	14.21	4.11	4.70
—	2.00	2.02	11.59	12.13	6.37	1.74
—	—	1.94	9.31	19.58	1.73	1.73
—	.97	.98	9.85	22.41	4.75	7.70
—	—	.51	15.53	9.41	5.69	6.27
—	—	5.01	6.64	11.02	5.91	3.55
—	—	.19	8.76	19.13	1.78	1.78
—	—	.95	6.10	14.39	.56	3.41
.49	1.95	6.89	10.99	14.25	3.55	4.74
1.45	1.93	.48	15.32	10.38	5.34	9.49
1.93	3.38	1.46	8.76	9.84	5.93	7.70
10.16	1.93	3.40	8.76	17.49	5.93	4.75
—	—	1.54	13.86	19.92	2.85	2.27
—	—	—	7.76	15.46	2.73	2.73
6.09	3.05	2.05	12.20	38.18	6.27	3.98

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Housekeeping Consumer Units  
Expenditures Reported for One Week in Spring 1951

LAMB		OTHER MEATS			CANNED MEATS	
Leg	Breast Etc.	Tongue Heart Etc.	Franks Smoked Sausage	Cold Cuts	Lunch Meat	Other Canned
\$ 3.92	\$ .49	\$ 1.97	\$12.05	\$23.01	\$ 4.74	\$ 7.70
8.71	3.08	.97	15.88	19.67	2.97	2.97
4.89	2.45	1.96	12.08	30.68	2.36	12.44
2.48	1.49	1.99	17.64	32.44	3.43	4.65
4.40	3.92	3.94	8.24	13.15	4.74	3.56
9.79	4.89	1.48	12.64	33.42	2.36	2.37
9.30	5.88	3.94	10.99	19.73	1.19	2.36
5.39	3.92	1.97	12.64	35.07	3.55	5.33
3.42	1.47	1.48	10.99	43.63	7.70	5.33
.49	.98	1.97	14.83	25.76	2.36	1.78
11.75	5.39	.99	13.13	18.08	4.14	10.07
\$ 1.47	\$ .98	\$ 1.97	\$11.53	\$ 8.76	\$ 2.97	\$ 6.52
2.94	.98	.99	11.54	12.05	2.37	5.92
3.42	.49	2.46	7.69	30.68	2.36	3.55
—	2.48	3.49	15.98	25.85	.53	6.97
—	—	.99	9.34	15.34	3.55	2.36
—	—	.49	11.53	16.98	3.55	2.36
2.45	.25	1.48	9.34	19.18	1.19	3.55
—	.49	.15	9.90	15.37	2.37	7.14
3.46	.49	.50	11.57	34.09	3.43	5.80
—	—	1.97	10.43	19.18	4.74	8.30
—	—	3.44	10.43	16.44	1.78	6.52
.96	.49	.49	13.18	14.80	4.74	4.75
—	1.47	3.94	11.53	18.08	4.14	4.14
.98	.98	1.48	10.43	7.68	4.74	3.55
10.28	2.94	1.97	15.93	21.37	4.74	4.14
2.94	1.47	.49	11.53	37.25	11.85	6.52
2.94	1.47	3.44	4.94	12.05	2.36	4.14
2.48	2.97	1.00	12.68	32.99	1.16	6.97
—	\$ .98	\$ 1.48	\$10.99	\$ 9.32	\$ 5.33	\$ 7.70
4.02	.20	—	13.80	17.09	4.05	4.63
2.42	1.45	1.46	12.04	31.15	8.31	2.37
—	—	1.03	17.75	15.49	7.39	5.69
1.45	—	.48	9.31	13.66	7.70	6.53
—	—	2.91	12.01	14.21	4.11	4.70
—	2.00	2.02	11.59	12.13	6.37	1.74
—	—	1.94	9.31	19.58	1.78	1.73
—	.97	.98	9.85	22.41	4.75	7.70
—	—	.51	15.53	9.41	5.69	6.27
—	—	5.01	6.64	11.02	5.91	3.55
—	—	.19	8.76	19.13	1.78	1.78
—	—	.95	6.10	14.39	.56	3.41
.49	1.95	6.89	10.99	14.25	3.55	4.74
1.45	1.93	.43	15.32	10.38	5.34	9.49
1.93	3.38	1.46	8.76	9.84	5.93	7.70
10.16	1.93	3.40	8.76	17.49	5.93	4.75
—	—	1.54	13.86	19.92	2.85	2.27
—	—	—	7.76	15.46	2.73	2.73
6.09	3.05	2.05	12.20	38.18	6.27	3.98



[fol. 73]

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IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANTS' EXHIBIT 32

Household Food Consumption Survey 1955  
Report No. 1

FOOD CONSUMPTION  
of HOUSEHOLDS in the  
UNITED STATES

DECEMBER 14 1963  
FILED

MAY 28 1963

DOCKETED

AT 10 O'CLOCK  
ELBERT A. WAGNER, JR.  
CLERK

U. S. DEPARTMENT OF AGRICULTURE

Washington, D. C.

Defendant's Exhibit 32



# FOOD CONSUMPTION OF HOUSEHOLDS IN THE UNITED STATES

*Agricultural Research Service and Agricultural Marketing Service*

This report contains a portion of the data from the U. S. Department of Agriculture's nationwide Survey of Household Food Consumption made in the Spring of 1955. The survey was part of the Department's broad program of research on the marketing and utilization of farm products and on family dietary levels.

Periodic examinations of food consumption of population groups are needed for many purposes -- for administration of public programs affecting food supply, distribution, and consumption; for educational programs to improve food habits; and for private efforts to broaden and improve the marketing of foods. Nationwide surveys of food consumption were made in 1936 and 1942, and a survey of food consumption of urban families in 1948. No surveys of rural families have been made since 1942 except on a regional basis.<sup>1</sup>

The 1955 survey was the most comprehensive yet undertaken. Like the earlier surveys, its objectives were to obtain current information on patterns of food consumption, expenditures, dietary levels, and household food practices. The households were grouped (1) by regions--Northeast, North Central, South, and West, (Census of Population regions. See map, p. 2); (2) by urbanization--rural farm, rural nonfarm, and urban within regions; and (3) by several family income classes within region-urbanization categories.

Because of the widespread demand for current data on food consumption patterns, the statistical data contained in this report are being issued immediately after tabulation and accompanied by a minimum of descriptive information. In this way, public and private research and marketing organizations may proceed with analysis of the data for their own use at the same time that studies are being carried on by several research groups within the Department of Agriculture.

The survey was based on a national probability sample of approximately 6,000 housekeeping households of one or more persons. Housekeeping households were defined as those in which at least one member had 10 or more meals from home food supplies during the week preceding the interview. Institutions and persons living on military reservations were not represented.

Collection of the data, made during April, May, and June of 1955, was by personal interview with household members, usually the homemaker. Information was obtained on the number of meals eaten at home and away from home by each individual in the household, expenditures for food eaten away from home, quantities of all food items used at home during the 7 days preced-

<sup>1</sup>See page 196 for list of earlier surveys.

ing the interview and expenditures for the purchased items, selected household food practices during the previous year, and various family characteristics such as income needed for classification of the data.

The basic data in this survey relate to quantities of food consumed, or used up during a week. The only exceptions are the figures for certain miscellaneous food items and tea and alcoholic beverages which relate to purchases made during the week rather than to consumption. For these commodities, purchases usually can be reported more readily than consumption. For an individual family there may be a substantial difference between purchases and consumption of a food during a week. Some of the food used may have been purchased earlier and some of the food purchased during the week may not have been consumed until later. For a large group of families, however, average purchases of a food tend to equal average consumption. For this reason, comparisons generally can be made between this survey and other large surveys where food purchases rather than food consumption are measured.

To assure adequate farm coverage the sample included, in addition to a basic cross-section of about 4,500 urban, rural nonfarm, and rural farm households, a supplemental sample of about 1,500 farm-operator households. Hence it was necessary in combining the data for rural farm and the other urbanizations to use appropriate weights in order to obtain the "all-urbanization" averages. A more detailed description of the sample design and its appraisal are presented on pages 186-188.

In requesting the information from households, trained interviewers used a detailed food list to help respondents recall the quantities of foods used during the week and the amounts paid for purchased items. (This method is sometimes referred to as the "recall-list method.") Since the success of surveys of this type depends in large part on the interviewers' skill in drawing out the necessary information from the person interviewed, considerable care was taken in the selection and training of the interviewers. At training schools, lasting from 3 to 5 days, instructions and practice were given in the sampling phase of the survey, in interviewing, and in recording in correct form on the schedule. Manuals of instruction, prepared by the contractor and reviewed by the USDA staff, were used in training schools and served as reference tools for interviewers during the collection period.

A glossary beginning on page 193 explains the major terms used in this study.

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## NOTES ON USE OF TABLES

Table 1 presents the counts of households and families in the survey.

Table 2 presents data on total food expenditures and the money value of food obtained without direct expense for the *family* (primary economic family) and the average size of the family and its income. (See Glossary, Family and Family size.) Where per person averages for groups of families are needed, they may be computed by dividing the family quantities by the average family size (table 2, column 3). This table is the only one in this report that presents data for households or families of 2 or more persons further classified by size. The number of families in some of the family size-income groups is small but averages for these cells are shown to permit maximum flexibility in analyses of the data. Averages for all columns in table 2 are based on all families in the cell (table 1) with the exception of average income (column 2). For this column the averages for all families and for families of 2 or more persons are based on the number of families reporting income (i.e., exclude the "not classified").

The basic data on foods consumed (tables 3-22) are for the *household*. (See Glossary, Household.) Averages in these tables are based on all households in the cell (table 1) whether or not they used the specified food. However, since the percentage of households using the food is shown, averages for these households only can be obtained by dividing the average for all households in the cell by the percentage using.

Where per person averages for groups of households are needed, they may be computed by dividing the household quantities by the average household size (number of "21-meal-at-home equivalent" persons in the household, table 3, column 2). The use of the number of 21-meal-at-home equivalent

persons for computing averages per person is an attempt to adjust for the fact that the number of persons in the family is not always identical with the number of persons eating from household (home) food supplies. Some family members may have eaten meals away from home and nonfamily members (guests, hired help, boarders) may have eaten from the respondent's household food supplies. This method has the limitation of assigning equal weight in quantity and cost to all meals (morning, noon, and evening), and makes no allowance for any difference between amounts or kinds of food at meals eaten away and those served at home.

The food used at home by households was classified by source, that is, purchased, produced by the household for its own use, or received as gift or pay. For group totals, as in table 4, the percentage, average quantity, and average money value have been shown separately by source as well as for all sources combined. For selected individual foods in tables 6-21, separate figures for food from all sources and purchased food are shown for households in the "all urbanizations" category and for the rural farm and rural nonfarm households. The difference between the figure for food from all sources and the figure for purchased food (except for bakery products and processed fruits and vegetables) gives a satisfactory estimate of home production because the quantities received as gift or pay were small.

Where combinations for groups of families or households are needed, they may be computed by using the counts of households or families shown in table 1. In making combinations, the appropriate adjustments for the oversampling of the rural farm households must be made. For example, in combining income classes for "all urbanizations," columns showing the weighted counts, where this adjustment had already been made, should be used. In combining rural farm and rural nonfarm into a single rural group, the full count of rural nonfarm, but only one-fourth of the rural farm households shown in table 1 should be used.

Table 10.--MEAT, POULTRY, FISH

UNITED STATES

Food used at home in a week, April-June 1955: Percentage of households using and average quantity and average money value per household (based on all households from all sources and purchased food separately for specified items; housekeeping households of 1 or more persons, by income

Type of data, household size group, and money income after income taxes for households of 2 or more persons (dollars)	Total meat		Beef							
			Total		Steak, fresh, frozen					
					Total		Round		Other	
(1)	All sources (2)	Pur- chased (2A)	All sources (3)	Pur- chased (3A)	All sources (4)	Pur- chased (4A)	All sources (5)	Pur- chased (5A)	All sources (6)	Pur- chased (6A)
<b>PERCENTAGE OF HOUSEHOLDS USING</b>										
All households .....	99.3	97.4	88.7	83.0	52.1	47.3	26.6	23.5	32.5	29.8
1-person households .....	97.8	95.5	72.7	69.8	37.0	36.0	16.9	16.5	22.8	22.2
Households of 2 or more persons ..	99.4	97.6	90.1	84.1	53.4	48.4	27.5	24.1	33.4	30.4
Under 2,000 .....	97.3	91.6	71.3	61.7	29.0	21.5	17.0	11.9	13.2	11.2
Under 1,000 .....	94.6	87.0	57.6	48.5	23.5	17.4	13.3	4.8	13.3	10.4
1,000-1,999 .....	99.0	94.6	80.0	70.1	32.6	24.1	19.4	13.8	16.4	11.8
2,000-2,999 .....	99.2	97.7	87.8	80.8	41.4	36.0	23.4	19.7	24.1	20.5
3,000-3,999 .....	99.7	98.7	91.7	86.2	52.5	47.8	29.0	25.5	29.2	26.6
4,000-4,999 .....	100.0	99.1	95.6	90.7	59.4	55.0	31.0	28.3	36.7	34.0
5,000-5,999 .....	100.0	99.4	96.7	93.1	64.7	61.0	32.6	30.0	40.5	38.5
6,000-7,999 .....	99.9	99.7	95.3	91.7	63.3	59.9	33.8	31.8	41.8	39.9
8,000-9,999 .....	100.0	99.5	96.9	93.1	75.0	71.2	33.9	31.0	53.9	51.6
10,000 and over .....	100.0	99.1	98.2	95.0	74.4	71.4	28.8	27.8	57.8	55.1
Not classified .....	99.6	96.6	90.6	81.6	56.1	49.2	24.4	19.6	38.8	34.8
<b>QUANTITY PER HOUSEHOLD (pounds)</b>										
All households .....	10.10	9.11	4.16	3.71	1.30	1.13	.56	.48	.73	.66
1-person households .....	3.56	3.33	1.37	1.29	.50	.48	.22	.21	.28	.27
Households of 2 or more persons ..	10.67	9.63	4.41	3.93	1.37	1.19	.60	.50	.77	.69
Under 2,000 .....	7.55	5.97	2.55	1.89	.63	.40	.33	.20	.30	.20
Under 1,000 .....	6.58	4.91	2.13	1.53	.53	.32	.28	.15	.25	.17
1,000-1,999 .....	8.14	6.65	2.82	2.12	.70	.46	.36	.23	.34	.23
2,000-2,999 .....	10.07	8.77	3.70	3.17	.99	.79	.51	.41	.48	.36
3,000-3,999 .....	10.63	9.72	4.25	3.80	1.19	1.02	.59	.50	.60	.52
4,000-4,999 .....	11.37	10.49	4.86	4.45	1.44	1.28	.66	.58	.78	.70
5,000-5,999 .....	12.08	11.31	5.16	4.82	1.68	1.55	.76	.68	.92	.87
6,000-7,999 .....	11.98	11.31	5.23	4.67	1.82	1.67	.77	.69	1.05	.97
8,000-9,999 .....	11.82	11.04	5.67	5.24	2.08	1.92	.76	.67	1.32	1.25
10,000 and over .....	12.92	12.30	6.07	5.78	2.52	2.40	.68	.65	1.84	1.76
Not classified .....	10.75	9.27	4.72	4.00	1.54	1.29	.53	.40	1.01	.90
<b>MONEY VALUE PER HOUSEHOLD (dollars)</b>										
All households .....	6.04	5.52	2.54	2.30	1.02	.90	.42	.36	.60	.55
1-person households .....	2.19	2.07	.86	.81	.40	.38	.17	.16	.23	.22
Households of 2 or more persons ..	6.38	5.83	2.69	2.43	1.07	.95	.44	.38	.63	.57
Under 2,000 .....	3.75	2.95	1.32	.97	.44	.28	.23	.14	.21	.15
Under 1,000 .....	3.21	2.37	1.08	.76	.35	.22	.19	.10	.16	.11
1,000-1,999 .....	4.10	3.33	1.47	1.10	.49	.33	.25	.16	.24	.17
2,000-2,999 .....	5.41	4.73	2.00	1.71	.71	.58	.37	.30	.34	.28
3,000-3,999 .....	6.00	5.52	2.41	2.17	.88	.76	.43	.36	.45	.40
4,000-4,999 .....	6.83	6.35	2.92	2.70	1.11	1.01	.50	.44	.61	.56
5,000-5,999 .....	7.59	7.16	3.24	3.05	1.30	1.21	.56	.50	.75	.71
6,000-7,999 .....	7.68	7.33	3.37	3.18	1.41	1.32	.57	.52	.80	.80
8,000-9,999 .....	7.97	7.58	3.84	3.62	1.74	1.64	.57	.52	1.17	1.12
10,000 and over .....	9.63	9.28	4.63	4.47	2.37	2.29	.59	.57	1.79	1.72
Not classified .....	6.75	5.97	3.11	2.73	1.30	1.14	.40	.31	.90	.82

See footnotes at end of table.



[fol. 77]

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IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANTS' EXHIBIT 33  
Household Food Consumption Survey 1955  
Report No. 6

DIETARY LEVELS  
of HOUSEHOLDS in the  
UNITED STATES

U. S. DEPARTMENT OF AGRICULTURE

Washington, D. C.

# DIETARY LEVELS OF HOUSEHOLDS IN THE UNITED STATES

*Agricultural Marketing Service and Agricultural Research Service*

## HIGHLIGHTS

The average amounts of food brought into household kitchens in the United States were sufficient to provide more than recommended allowances for calories and eight nutrients studied in this survey of a week's food consumption in the spring of 1955. Not all households, however, had diets that met recommended levels. When household supplies failed to meet nutrient recommendations, they were most often short in milk, especially important for calcium, and in vitamin C-rich fruits and vegetables.

About 3 in 10 households had diets that provided less calcium than the allowances recommended by the National Research Council. About 1 in 4 had less than recommended amounts of ascorbic acid (vitamin C) and slightly smaller proportions had less vitamin A, riboflavin, and thiamine than the allowances specify. A tenth or fewer had food furnishing less than recommended amounts of iron, protein, and niacin.

This does not prove that all of those families were poorly fed or subject to malnutrition; the recommended allowances provide a considerable margin of safety over average needs. This margin varies for the different nutrients. About 90 percent of the households had food that provided at least two-thirds of the recommended amounts of ascorbic acid and calcium and the diets of an even higher percentage furnished at least two-thirds of the allowances for other nutrients.

Data in this report show amounts of nutrients in the food that came into household kitchens for consumption. How much food was discarded either as plate waste or during or after preparation was not reported. Hence amounts of nutrients in the food actually eaten may be smaller than the amounts shown in the tables of this publication. Losses in terms of calories may be especially high.

### COMPARISON WITH EARLIER SURVEYS

Diets in this country as a whole have shown considerable improvement since the large-scale survey in 1936 when a third of the diets were classed as "poor." Today in probably as few as 10 percent of the Nation's households can the diets be called "poor" by the standards used in the earlier period.

Of the nutrients for which calculations have been made, three B-vitamins—thiamine, niacin, and riboflavin—and iron showed the greatest increase since 1936. These substances are added to grain products as enrichment ingredients

and some of them, especially niacin and riboflavin, have also been increased by greater consumption of meat and milk. The calcium and protein content of diets has also increased considerably as a result of increases in milk and meat consumption.

Relatively little improvement in urban dietary levels has taken place since 1948 when a food consumption survey of urban families of two or more persons was made. In 1955 approximately the same proportions of urban household diets as in 1948 failed to furnish recommended amounts of calcium, vitamin A, thiamine, and riboflavin—nutrients that often are in shorter than desirable supply in diets. Some improvement in protein, iron, and niacin levels has occurred, owing largely to the greater consumption of meat, poultry, and fish. There was some lowering of ascorbic acid levels, chiefly because of a shift in the pattern of household consumption of fruits and vegetables.

The improvements in diets in the past two decades have been the result of a combination of factors. We have enjoyed economic conditions under which an increasing proportion of people have been able to have the kinds of food they want. Average real income (income after adjustment for increases in price) is higher, and the benefits of increased incomes have especially affected families at the lower end of the income distribution. And finally, people are more generally aware of their need for a proper assortment of foods for good health.

### RURAL-URBAN DIFFERENCES

Though rural-urban differences in food consumption patterns have become less marked over the last 20 years, considerable differences in dietary levels still exist. In the spring of 1955 farm diets provided more of all nutrients except ascorbic acid and vitamin A, even when differences in household size (i.e., the number of persons served at home) were accounted for. When differences in the composition of the household (i.e., the age and sex of members though not the activity of the members in this survey) are taken into account, most of the differences are minimized though still significant.

Urban diets provided more vitamin A and ascorbic acid than farm diets because of larger quantities of dark-green and deep-yellow vegetables (for vitamin A) and citrus fruit (for ascorbic acid). Only 67 percent of the farm households had at least one dark-green or deep-yellow vegetable during the survey week compared with 82 percent of the urban households. Comparable proportions for citrus fruits were 69 percent and 87 percent.



The larger number of calories from the farm diets was the result of larger quantities per person of milk, grain products, fats and oils, and sugars. The higher milk consumption also meant more calcium and riboflavin and contributed to the higher amounts of protein and thiamine.

Among farm households, home-produced food contributed at least 30 percent of the total quantities of the nutrients for which calculations were made, with the proportion rising to about 50 percent for vitamin A, calcium, and riboflavin. About one-third of the total vitamin A value of farm diets was supplied by green and yellow vegetables, including sweetpotatoes. One-half of these vegetables were grown at home. Calcium and riboflavin were supplied chiefly by milk, a large proportion of which was home-produced (68 percent). Milk also is an economical source of protein. Urban households spent 14 percent of their total food dollars for milk in its several forms, including cream, cheese, and ice cream, and yet obtained 22 percent of their total protein from these foods.

#### DIFFERENCES BY INCOME

Considerable variation in food consumption patterns was found when families were classified by money income, as would be expected. Differences in types of foods used were usually greater, however, than differences in the amounts of nutrients provided.

For income comparisons it is desirable to consider one urbanization group at a time since there are relatively more farm families in the lower money income classes and more urban families in the upper income classes. Even for separate urbanization groups, differences in food consumption among income classes probably should not be attributed entirely to income differences. They are likely to reflect also differences among households in race, nationality and regional background, education, size, and other characteristics.

In any event households with higher money incomes spent considerably more for food than the lower income households. For example, urban households with family incomes between \$6,000 and \$8,000 averaged \$31 per household or \$9.00 per person for food used at home in the week, with 12 percent spending under \$6.00 per person and 20 percent over \$12.00. Households with incomes between \$2,000 and \$3,000 averaged \$21 per household or \$6.50 per person, with 40 percent spending less than \$6.00 and 7 percent more than \$12.00.

In farm, rural nonfarm, and urban groups the number of calories in food brought into household kitchens varied little with the family income. Amounts of ascorbic acid rose sharply with income. The "income elasticity" of this nutrient is closely associated with the relatively high income elasticity of fresh fruits and fruit juices, rich sources of this vitamin.

In farm diets most nutrients other than ascorbic acid were little affected by income. Vitamin A was the only other nutrient that increased with income. It is likely that in the spring, when gardens are not yet producing much and stocks of canned and frozen foods from the previous year are likely to be

depleted, the farm family must buy much of the fruit and vegetables that furnish these two vitamins. Farm families with higher money incomes bought more of these ascorbic acid- and vitamin A-rich foods.

In both the rural nonfarm and urban groups the diets of higher income families contained larger quantities of nearly all nutrients than did those of the lower income groups. The differences were particularly marked between the low- and the middle-income groups.

#### ONE-PERSON HOUSEHOLDS

Almost three-fourths of the one-person households lived in cities and half were women 55 years of age or over. Nutrient averages for this group were high--20 percent or more above those of households of two or more persons for many nutrients (probably an indication of considerable waste). Nevertheless, the proportion of one-person households with diets that met the recommended allowances of the National Research Council was no greater than that of the entire group of families; in fact, the proportion that met allowances for protein and iron was lower.

#### FAT IN DIETS

Because of current interest in the relation of the kind and amount of dietary fat to cardiovascular diseases, the fat in the food brought into household kitchens has been calculated. An average of 155 grams of fat per day was available for consumption. The amount was somewhat higher in farm diets than in nonfarm, 170 grams and 153 grams, respectively. It should be noted however that no deductions have been made in the survey for food discarded. Such discards probably include relatively large amounts of fat, but this survey provided no basis for quantitative estimates.

The share of the calories that came from fat was 44 percent; 13 percent came from protein, and the remaining 43 percent from carbohydrate. Rural-urban differences in these proportions were not large because although rural diets provided more fat, they also provided more protein and carbohydrate.

The proportion of calories from fat in urban diets, 45 percent, was larger than was found in the 1948 survey, 42 percent. The increase was due to the greater consumption of meat, poultry, and fish and the smaller consumption of high-carbohydrate foods such as grain products in the later year. Slightly more than one-fourth of the dietary fat in household food supplies in 1955 came from the meat, poultry, and fish group.

The shift toward a higher proportion of fat in household food supplies is even more marked between 1936 and 1955. In the survey made in the earlier period, only 38 percent of the calories in the food of all households (urban and rural) was provided by fat, compared with 44 percent in the 1955 survey. This trend is substantiated by estimates based on per capita food consumption derived from statistics on production, stocks, and utilization. Whether the shift in the source of our calories--more from fat, less from carbohydrate--is or is not desirable nutritionally is a subject needing more research.

[fol. 80]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANTS' EXHIBIT 34

[Letterhead of Amalgamated Meat Cutters and Butcher  
Workmen of North America, Chicago 14, Illinois]

June 4, 1959

As you know, the existing Collective Bargaining Agreement between you and the AMALGAMATED MEAT CUTTERS' UNION expires on October 3, 1959.

This is to inform you that it is our desire to open negotiations for a new Contract to cover wages, hours and various other conditions of employment.

In the event you have shops located within the jurisdiction of Locals 189, 262, 320, 546, 547, 571 and 638, you may consider this letter as notice of our desire to negotiate a new Contract on behalf of those Unions listed.

We shall be pleased to meet with you at any time mutually convenient for the purpose of negotiating the terms of a new Contract.

We are serving this notice in ample time to begin negotiations any time after July 1, 1959. In this manner we should encounter no retroactive problems.

With very best wishes, I remain

Very truly yours,

/s/ R. EMMETT KELLY  
Chairman, Affiliated Local  
Unions' Negotiating Committee.  
Locals 189, 262, 320, 546, 547, 571 and 638

[fol. 81]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANTS' EXHIBIT 35

CONTRACT DEMANDS SUBMITTED TO EMPLOYERS JULY 9, 1959 BY AMALGAMATED MEAT CUTTERS-LOCALS NO. 189, 262, 320, 546, 547, 571 AND 638.

1. A two year agreement.
2. Whenever an employee who has been employed six (6) months or longer leaves his present employment for any reason, he shall be entitled to pro-rated vacation based on his months of service.
3. In place of Victory Day Holiday as shown in contract, all employees shall have as an additional holiday, either his birthday or his anniversary date.
4. Establish an overall, company seniority clause.
5. Regardless of any pending litigation, the terms of the new two year agreement to remain the same until its expiration date.
6. Establish Pension Plan.
7. Establish Health & Welfare Plan.
8. Vacations: Four (4) weeks after 15 years' service.
9. Eliminate Section 9 of Article 7 from Self-Service agreement.
10. Add "pricing on the premises" in Self-Service contract, Article 2, Section 2.
11. Add "Jury Duty Clause" covering pay for time lost.
12. In Local 189, establish 40 hour work week in Groups 3A and 4 and time and one-half after 6:00 P. M.
13. Employer will compensate employee up to three full days for immediate family funeral leave.

14. Establish clause covering "full pay for injuries on the job until compensation takes over" and delete Section 3, Article VI in existing contract.
15. Equalize Self-Service and Service wage rates.
16. Increase all Journeymen and Head Meat Cutters in self-service markets.

1st year ..... \$7.50 per week

2nd year ..... 6.00 " "

**Increase all Apprentices**

1st year 0 to 6 Months ..... \$75.00

6 to 12 " ..... 79.00

12 to 18 " ..... 84.00

18 to 24 " ..... 89.00

24 to 36 " ..... 94.00

2nd year 0 to 6 Months ..... \$75.00

6 to 12 " ..... 81.00

12 to 18 " ..... 87.00

18 to 24 " ..... 92.00

24 to 36 " ..... 97.00

Corresponding increases for extra work, or work on the sixth day.

17. The Affiliated Local Unions reserve the right to amend these demands at any time during the negotiations.

[Handwritten notation—Contract clause covering apprentice training.]

[fol. 82]

PART II

**AMENDMENTS TO**

**CONTRACT DEMANDS SUBMITTED TO EMPLOYERS JULY 9, 1959 BY AMALGAMATED MEAT CUTTERS LOCALS NO. 189, 262, 320, 546, 547, 571 AND 638.**

AMEND ITEM NO. 6 to show a demand of \$10.00 monthly payment for any employee working five (5) days or more in any month.



AMEND ITEM NO. 7 to show a \$14.00 monthly payment to be provided by the employer for any employee working five (5) days or more in any one month.

ADD THE FOLLOWING:

All apprentices who attend the full meat training course being conducted in the Washburne Trade School and who receive a Certificate of Completion shall be classified as journeymen at the end of  $2\frac{1}{2}$  years of apprenticeship and shall be entitled to the journeyman rate of pay.

School classes are held 48 weeks per year. The above described students must attend a total of 35 weeks, one day each week and 8 hours per day.

7/21/59

[fol. 83]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANTS' EXHIBIT 36

DOCKETED

12 RESTRICTIONS IN THE CONTRACTS  
AND PRACTICES OF CHICAGO  
MEAT CUTTER LOCALS

- I. Restrictions on the hours when a market may be open.
- II. Restrictions affecting productivity and hence tending to increase payroll costs.
  - A. Restrictions prohibiting the use of a fully automatic wrapping and packaging machine.
  - B. Restrictions which cause inflexibility in the use of the work force.
    1. The fixed workday of 9:00 A.M to 6:00 P.M.
    2. The penalty overtime premium for work before 9:00 A.M. and after 6:00 P.M.

3. The requirement that inventory be taken during market operating hours.

C. Restrictions on the character of the work force.

1. The prohibition against the use of females in market work—whether as meat clerks, wrappers or limited to delicatessen operations—through the omission from the contract of a wage scale for female clerks comparable to wage scales for females for comparable work.
2. Prohibitions against the use of part-time apprentices.
3. Prohibitions against the use of clean-up boys at less than apprentice wage rates.
4. Too small a ratio of apprentices to journeymen.

D. Restrictions requiring all processing to be performed on the premises.

1. The contract requirement that all retail cuts of fresh meats be cut, prepared, fabricated and packaged on the premises.
2. The contract requirement that frozen fresh meats be processed, that is, be prepared and frozen on the premises.
3. The requirement existing in *practice*, but not by contract, that all meat products be priced on the premises.

*Exception:* Delicatessen meat products sold by service market operators, being exempt from the Union's jurisdiction, may be prepriced off the premises.

[fol. 84]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

## DEFENDANTS' EXHIBIT 37

CONTRACT DEMANDS SUBMITTED TO EMPLOYERS JULY 27, 1961 BY AMALGAMATED MEAT CUTTERS LOCALS NO. 189, 262, 320, 546, 547, 571 AND 638.

1. A two year agreement.
2. Establish a Health and Welfare program with full contribution to be made by the employer.

3. *Wages:*

Increase Journeymen Meat Cutters by:

\$6.00 per week for first year

6.00 per week for second year.

Increase all Head Meat Cutters on the following graduated schedule based on a 40 hour-work week.

\$ 0,000 to \$ 4,000	Gross Volume	\$ 136.50
4,000 to 4,250	"	137.00
4,250 to 4,500	"	137.50
4,500 to 4,750	"	138.00
4,750 to 5,000	"	138.50
5,000 to 5,250	"	139.00
5,250 to 5,500	"	139.50
5,500 to 5,750	"	140.00
5,750 to 6,000	"	140.50
6,000 to 6,250	"	141.00
6,250 to 6,500	"	141.50
6,500 to 6,750	"	142.00
6,750 to 7,000	"	142.50
7,000 to 7,250	"	143.00
7,250 to 7,500	"	143.50
7,500 to 7,750	"	144.00
7,750 to 8,000	"	144.50
8,000 to 8,250	"	145.00
8,250 to 8,500	"	145.50
8,500 to 8,750	"	146.00
8,750 to 9,000	"	146.50
9,000 to 9,250	"	147.00
9,250 to 9,500	"	147.50

9,500 to	9,750	Gross Volume -	148.00
9,750 to	10,000	" "	148.50
10,000 to	10,250	" "	149.00
10,250 to	10,500	" "	149.50
10,500 to	10,750	" "	150.00
10,750 to	11,000	" "	150.50
11,000 to	11,250	" "	151.00
11,250 to	11,500	" "	151.50
11,500 to	11,750	" "	152.00
11,750 to	12,000	" "	152.50
12,000 to	12,250	" "	158.00
12,250 to	12,500	" "	158.50
12,500 to	12,750	" "	159.00
12,750 to	13,000	" "	159.50
13,000 to	13,250	" "	160.00
13,250 to	13,500	" "	160.50
13,500 to	13,750	" "	161.00
13,750 to	14,000	" "	161.50
14,000 to	14,250	" "	162.00

[fol. 85]

## 3. Wages: (continued)

## Head Meat Cutters Wages - continued.

\$ 14,250 to	\$ 14,500	Gross Volume -	\$ 162.50
14,500 to	14,750	" "	163.00
14,750 to	15,000	" "	163.50
15,000 to	15,250	" "	169.00
15,250 to	15,500	" "	169.50
15,500 to	15,750	" "	170.00
15,750 to	16,000	" "	170.50
16,000 to	16,250	" "	171.00
16,250 to	16,500	" "	171.50
16,500 to	16,750	" "	172.00
16,750 to	17,000	" "	172.50
17,000 to	17,250	" "	173.00
17,250 to	17,500	" "	173.50
17,500 to	17,750	" "	174.00
17,750 to	18,000	" "	174.50
18,000 to	18,250	" "	175.00
18,250 to	18,500	" "	175.50
18,500 to	18,750	" "	176.00

18,750 to	19,000	Gross Volume -	176.50
19,000 to	19,250	" " -	177.00
19,250 to	19,500	" " -	177.50
19,500 to	19,750	" " -	178.00
19,750 to	20,000	" " -	178.50
20,000 to	25,000	" " -	184.00
25,000 to	30,000	" " -	189.50
30,000 to	35,000	" " -	198.50

Head Meat Cutter volume wage rates shall be based on average weekly gross sales of meat department merchandise, using 13 week periods for determination and readjustment. These periods will begin and end as provided below, except the first readjustment of wages shall be established for the gross sales period beginning ....., 196.....

Thereafter the established periods shall be:

.....19.....	through.....	19.....
.....19.....	through.....	19.....
.....19.....	through.....	19.....
.....19.....	through.....	19.....

For the second contract year all Head Meat Cutter basic rates will begin at \$142.50 and follow the same proportionate increased schedule as shown above.

#### Apprentices:

	1st year	2nd year
0 to 6 Months -	\$ 75.00	\$ 75.00
6 to 12 " -	82.00	83.00
12 to 18 " -	89.00	91.00
18 to 24 " -	94.00	97.00
24 to 36 " -	100.00	104.00

[fol. 86]

#### 3. Wages: (continued)

##### Apprentices: (continued)

All apprentices who attend the full meat training course being conducted in the Wash-



burne Trade School and who receive a Certificate of Completion shall be classified as journeymen at the end of 2-1/2 years of apprenticeship and shall be entitled to the journeyman rate of pay.

School classes are held 48 weeks per year. The above described students must attend a total of 35 weeks, one day each week and 8 hours per day.

**Wages: (continued).**

Time and one-half shall be paid for all work over eight hours in any one day and forty hours in any week.

During a holiday week, the fifth day shall be paid at the rate of time and one-half.

A premium rate of 37-1/2 cents per hour shall be paid for all extra work during the first contract year and fifty cents per hour during the second contract year.

4. Establish a pension plan with the full contribution to be made by the employer.
5. Wherever a Profit-Sharing or Thrift Plan exists, all members of the union employed by said company to be permitted to participate in such plan.
6. In Local 189 change the hourly structure to five 8 hour days and a 40 hour work week in Groups 3, 3A and 4. Starting time to be no earlier than 9:00 A.M.

**7. Vacations:**

- a) Establish a new vacation policy of three weeks after eight years of service and four weeks after twelve years of service.
- b) Whenever an employee who has been employed six months or longer leaves his present employment for any reason, he shall be entitled to prorated vacation based on his months of service.

c) Vacation pay shall be based on the rate being paid at the time the vacation is taken.

d) Vacation schedules must be posted in the market thirty days prior to the time the vacation is due.

8. Add "Pricing on the Premises" clause.
9. Eliminate the "No Strike-No Lockout" clause pending the outcome of the Rockford, Illinois arbitration decision.
10. Holidays: Eliminate the clause having to do with Victory Day and insert in its place an additional holiday to be known as Veterans' Day.
11. Establish a "Hiring Hall" clause.
12. Establish an over-all company seniority clause.  
[fol. 87]
13. Members of the Meat Cutters Union shall not be required as a condition of their employment to either load or unload merchandise.
14. Reword the "Union Security" clause to comply with N. L. R. B. rulings.
15. Extra help shall be paid the day they work, or in the event they work more than one day, they shall be paid the last day of the week in which they work.
16. In Article 5 of the existing agreement, add after Item 7 the following:  
  
It is understood by and between the parties to this agreement that where the store remains open on Sunday, Items numbered 3, 4, 6 and 7 will not be sold on Sunday.
17. In Article 4, Section 8, increase the rest periods to fifteen minutes twice daily.
18. Eliminate the system of staggered starting hours and return to a 9:00 A.M. starting time.
19. Establish a maximum "Work Standards" clause.
20. Eliminate the "Favored Nations" clause.
21. Eliminate free "clean-up" time in service markets.

22. Add to Article 3, Section 4 the following:

Provided that time and one-half is paid for all work performed after 6:00 P.M.

23. The Affiliated Local Unions reserve the right to amend these demands at any time during the negotiations.

Affiliated Local Unions' Negotiating Committee.  
Locals 189, 262, 320, 546, 547, 571 and 638.

[fol. 88]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANTS' EXHIBIT 38

Chicago MC  
9/11/61

1961-196  
AMALGAMATED MEAT CUTTERS  
& BUTCHER WORKMEN  
OF NORTH AMERICA, AFL-CIO

LOCAL 546 Are: Chicago, Ill.

This Agreement entered into this ..... day of ....., 1961, between the Amalgamated Meat Cutters and Butcher Workmen of North America, Local 546 (AFL-CIO), hereinafter sometimes referred to as the "Union" and ....., hereinafter called the "Employer."

ARTICLE I

GENERAL

Section 1.1 *Entire Agreement*

This agreement and the supplement or appendix attached hereto, if any, constitute the sole and entire existing agreement between the parties and supersede all prior agreements, commitments and practices, whether oral or written, between the Employer and the Union or the Employer and any of the covered employees, and express all obligations of, and restrictions imposed on, the Employer and the Union.

## Section 1.2 *Effective Date*

Unless the context of a provision indicates otherwise, all provisions of the contract become effective upon the date of execution of the contract.

## Section 1.3 *Notices*

All notices required under this contract shall be deemed to be properly served if delivered in writing personally or sent by certified or registered mail to the offices of the Union at 130 North Wells Street, Chicago, Illinois, or to the Employer at the address designated below, or to an employee at his home or residence address, or to any subsequent address which the Union, the employee or the Employer may designate in writing for such purpose. Date of service of a notice served by mail shall be the date on which such notice is postmarked by a post-office of the United States Post Office Department.

## Section 1.4 *Separability*

Nothing contained in this agreement is intended to violate any Federal or State law, rule or regulation made pursuant thereto. If any part of this agreement is construed by a court or board of competent jurisdiction to be in such violation, then that part shall be null and void, but the remainder of the contract shall continue in full force and the parties shall immediately begin negotiations to replace the void part with a valid provision; provided, further, that in the event the parties cannot agree upon a substitute provision all other provisions of the contract shall remain in full force and effect for the term hereof.

## [fol. 89] Section 1.5 *Marginal Headings*

The captions of the several articles and sections of the contract are for convenience only and in no way limit, enlarge, define or otherwise-affect the scope or content of the contract or any provision thereof.

## Section 1.6 *Amendments*

This agreement is subject to amendment, alteration, or addition only by a subsequent written agreement between, and executed by, the Employer and the Union. The waiver of

any breach, term or condition of this agreement by either party shall not constitute a precedent in the future enforcement of all its terms and conditions.

### Section 1.7 *Definitions and Job Classifications*

- a) *Employer*—The term "Employer" means one who employs another, that is, one who uses the services of another. The term includes any person who has a substantial proprietary interest in the business.
- b) *Employee*—The term "employee" means any person covered by this contract who works for wages or salary in the service of an employer. Any employee who becomes an employer shall be entitled to withdraw from the Union.
- c) *Full-time employee*—A full-time employee is an employee who is employed to work 40 hours a week on a regular basis.
- d) *Meat Clerks*—Male or female employees may be employed in service and self-service markets and departments to board, boat, tray, wrap, scale, price, label, display, stock meats, serve customers and slice delicatessen meats for such markets or departments, and to clean anything they work with.
- e) *Apprentices*—An apprentice is an employee who is in training to become a Journeyman butcher. An apprentice must be at least sixteen years of age. The Employer may employ one apprentice for each two journeymen employed by the Employer within the jurisdiction of the Local. A report covering the number of apprentices employed in relationship to the number of journeymen employed shall be furnished quarterly to the Union.
- f) *Journeyman*—After serving three years of apprenticeship (two and one-half ( $2\frac{1}{2}$ ) years if the apprentice furnishes the Employer with a Certificate issued by the Washburne Trade School that he has satisfactorily completed the full meat training course of said school), an employee, provided he can satisfactorily perform all the functions of a Journeyman, shall be classified as a Journeyman Meat Cutter and shall be paid the Journeyman rate of pay.



- g) *Head Meat Cutter*—The term "Head Meat Cutter" means that Journeyman meat cutter, if any, who has been assigned the responsibility for the management and operation of the market, or the meat department, including the direction of the work of other meat cutters.

[fol. 90] Section 1.8 *Successors and Assigns*

This agreement shall be binding upon the Union and the Employer and their successors and assigns.

Section 1.9 *Waiver*

The parties acknowledge that during the negotiations which resulted in this agreement, each had the unlimited right and opportunity to make demands and proposals with respect to all proper subjects of collective bargaining and that all such subjects have been discussed and negotiated upon and the agreements contained in this contract were arrived at after the free exercise of such rights and opportunities. Therefore, the Employer and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter not specifically referred to or covered in this agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

[fol. 91]

## ARTICLE II

### RECOGNITION AND JURISDICTION

Section 2.1 *Recognition*

The Employer recognizes the Union as the sole and exclusive bargaining agency for all head meat cutters, Journeymen, apprentices and meat clerks employed by the Employer in its retail meat markets and meat departments \*:

\* Use whichever of the following descriptions is applicable:

- (1) within the following described area within the City of Chicago, Illinois

—area description—

(applicable only to Locals located within Chicago)

- (2) within the following described area within the City of Chicago, Illinois

—area description—

and also in each city in the State of Illinois designated by an asterisk (\*) in the following list:

—list cities—

(applicable to any Local which has jurisdiction partly within and partly without the City of Chicago)

- (3) in each city in the State of Illinois designated by an asterisk (\*) in the following list:

—list cities—

(applicable to any Local whose jurisdiction is entirely outside of Chicago)

## Section 2.2 *Warranty of Majority Representation*

The Union warrants that it represents a majority of the employees covered by this collective bargaining agreement.

## [fol. 92] Section 2.3a *Jurisdiction*

The Employer agrees that the employees covered by this contract shall perform all processing into retail cuts (i.e., cutting, trimming and fabricating), weighing, pricing, labeling, wrapping, packaging and other preparing for retail sale of all fresh beef, veal, pork, lamb, mutton, fish and rabbits, and such processing of such other meats and meat products as the Employer may assign to the meat market or department for handling. All processing assigned to the employees covered by this contract pursuant to this Section 2.3 shall be performed on the Employer's premises or im-

mediately adjacent thereto. As used herein the term "fresh" does not include any frozen, smoked, cured, cooked or otherwise processed meat or meat product. . .

[fol. 93]

## ARTICLE III

### UNION-MANAGEMENT RELATIONS

#### Section 3.1 *Union Security*

It shall be a condition of employment that all employees of the Employer covered by this agreement who are members of the Union in good standing on the effective date of this agreement (the term "effective date" being defined in Article I, Section 1.2) shall remain members in good standing and those who are not members on the effective date of this agreement shall, on the 31st day following the effective date of this agreement, become and remain members in good standing in the Union. It shall also be a condition of employment that all employees covered by this agreement and hired on or after its effective date shall, on the 31st day following the beginning of such employment become and remain members in good standing in the Union.

#### Section 3.2 *Union*

The Union agrees that its members shall perform all work assigned to them by the Employer, that they shall uphold reasonable rules promulgated by the Employer covering the attendance, health, safety and sanitation of employees, the maintenance and operation of the premises and equipment and work practices, and that they shall work for the best interests of the Employer in every way just and lawful.

#### Section 3.3 *Union Business Representatives*

Union Business Representatives shall be admitted to the Employer's market premises during market operating hours for the purpose of ascertaining whether or not this Agreement is being observed and for collecting dues. Such activities shall be conducted in such a manner as not to interfere with the orderly operation of Employer's business,

Business Representatives shall have full authority to request the immediate discharge of any employee who has voluntarily agreed with his Employer to receive wages below the wage scale fixed herein.

#### Section 3.4 *Display of Contract and Union Shop Cards*

This Agreement is to be kept posted in the place of employment so that every employee may have equal and easy access to same.

It will be the duty of the Employer to display Union shop cards in all establishments covered by this contract. These cards shall remain the property of the Union; and the Employer shall have their usage only until such time as the Union shall request their return. The Employer agrees to surrender same immediately upon demand by the Union.

#### [fol. 94] Section 3.5 *Discipline*

During an employee's probationary period, that is, during his first thirty (30) days of employment, an employee may be discharged for any reason at the sole discretion of the Employer. After an employee has completed the probationary period, such employee shall not be suspended, discharged or otherwise disciplined without just cause, just cause to include but not be limited to the following: poor performance on the job (whether due to inefficiency, loafing, carelessness or incompetency); deliberate and willful refusal to carry out a proper order promptly; dishonesty or other misconduct in connection with work, such as short-weights, falsification of a record such as a time or employment record, sabotage, vandalism, stealing, etc.; serious or persistent infraction of reasonable rules promulgated by management relating to the health, safety, and sanitation of employees or the maintenance and operation of the premises and equipment, such as using or being under the influence of alcoholic liquors or narcotics while on duty, etc.; incivility to customers; engaging in a strike, work stoppage, slowdown, or picketing in violation of this contract; provided, however, that in the event of a dispute as to whether a suspension, discharge, or other disciplinary penalty was

for just cause the matter shall be adjusted in accordance with the grievance and arbitration provisions of this contract.

### Section 3.6 *Management*

Except as specifically abridged or limited by the express provisions of this agreement or any supplementary agreement that may hereafter be made, the Employer retains all the rights, powers and authority exercised or had by it prior to the time the Employer entered into its ~~first~~ collective bargaining agreement with this Union.

### Section 3.7 *Concessions to Other Employers*

The Union agrees that during the term of this Agreement it will not enter into a contract with any other employer which grants to such other employer the right to operate meat markets or meat departments for lesser wages (or longer hours) or any other condition of employment or market operation more favorable to such other employer than those contained in this Contract except upon the condition that this Employer shall receive the benefit of any more favorable terms granted to such other employer.

[fol. 95]

## ARTICLE IV

### WORKING HOURS AND OTHER CONDITIONS OF EMPLOYMENT

#### Section 4.1 *Workday and Workweek*

Eight (8) hours exclusive of meal periods shall constitute the basic workday.

The basic workweek for full-time employees shall consist of five basic workdays (40 hours).

#### Section 4.2 *Meal and Rest Periods*

Each employee shall be allowed one hour for lunch and one ten-minute rest period for each four hours worked each day. Each employee who is scheduled to work after 6:00 P.M. shall also be allowed one-half hour off for supper, pro-



vided, however, that any employee who did not receive a lunch hour because of a late starting shall be given one hour off for supper.

No lunch period shall begin earlier than 11:00 A.M. nor end later than 2:00 P.M. and no supper period shall begin earlier than 5:00 P.M. nor end later than 8:00 P.M. Each rest period shall be taken as near the middle of the employee's half workday as practical.

#### Section 4.3 *Work Hours; No Split Shifts*

The hours and days to be worked by each employee shall be determined by the Employer except that no employee shall work a "split" shift, that is, any workday the continuity of which is broken by a period longer than a meal period. Each employee shall report dressed and ready for work at his scheduled starting time.

#### Section 4.4 *Sixth Day Call-In Guarantee*

An employee who works 40 hours in five (5) days shall be guaranteed four hours work or pay in lieu thereof when called to work on the sixth day of a week.

#### Section 4.5 *Uniforms, Laundry, Tools and Equipment*

Required uniforms and the laundry thereof (except dacron uniforms), tools and sharpening of tools shall be furnished free of charge by the Employer. Dacron uniforms, when furnished by the Employer, shall be laundered by the employee.

The kinds of saws, power saws, conveyors, sealing irons, sealing plates, staplers, recording and printing sealers for weighing, vacuum sealing equipment, packaging equipment and other tools which the Employer may use shall be determined by the Employer.

#### [fol. 96] Section 4.6 *Overtime and Other Premium Pay*

All employees may be required to work overtime.

*Time and one-half* the employee's regular hourly rate of pay shall be paid for all work:

- a) In excess of 8 hours in any one day.
- b) Effective September 3, 1963 after 44 hours in any week.
- c) On Sundays, and
- d) On Holidays.

*Premium pay* in the amount of twenty-five (25¢) per hour shall be paid in addition to the regular hourly rate for all work on the fifth day of a holiday workweek and on the sixth day of a regular workweek, except that this premium shall not be applicable to any work for which the employee is entitled to receive time and one-half.

#### Section 4.7 *Calculation of Overtime*

In no case will there be a duplication or pyramiding of daily, weekly or other premium compensation. Thus, any hours paid for at time and one-half on a daily basis for Sunday or holiday work shall be excluded in calculating weekly overtime. Also, only hours actually worked shall be considered in computing overtime pay and hours not worked but paid for under Section 6.1 (Holidays) shall not be considered.

[fol. 97]

## ARTICLE V

### WAGES

#### Section 5.1 *Wage Rates*

During the term of this agreement, the Employer agrees to pay not less than the minimum wage rates set out in Appendix A attached hereto.

#### Section 5.2 *Head Meat Cutter Relief*

Whenever a Journeyman Meat Cutter relieves the Head Meat Cutter and assumes his full responsibilities for a full calendar week he shall be paid not less than the minimum contract rate of pay for Head Meat Cutters.

## ARTICLE VI HOLIDAYS, VACATIONS & OTHER COMPENSABLE ABSENCES

### Section 6.1 HOLIDAYS

#### a) *National Holidays Not Worked*

All full-time employees who qualify shall receive eight (8) hours pay at straight-time as "holiday pay" for work not performed on the following holidays or the days observed in lieu thereof:

New Year's Day  
Decoration (Memorial) Day  
Independence Day

Labor Day  
Thanksgiving  
Christmas

#### b) *Holiday Pay Qualifications*

To qualify for holiday pay under the preceding provisions of this section, a full-time employee must work both the scheduled workdays before and after the holiday unless unable to do so due to proven illness, injury, or other excused reason, provided that in the latter event he works at least one day during the holiday week except when the absence is due to his vacation, in which event Section 6.2 (Vacations) will apply.

#### c) *Holidays Worked*

Any employee who actually works on the holiday shall receive, in addition to any pay to which he may be entitled under the preceding provision of this section, pay for all hours actually worked on the holiday in accordance with the other provisions of this contract.

### Section 6.2 VACATIONS

Each full-time employee covered by this contract who qualifies shall be entitled to a vacation with pay for each year of full-time employment in accordance with the following schedule:

Number of Successive Years of Full-time Employment	Number of Weeks of Vacation-With Pay
1 year	1
2 thru 9 years, inclusive	2
10 or more years	3

As used herein the term "year of . . . . employment" means the period beginning on the date of most recent employment (or, after the first year, on the anniversary date of such employment) and ending on the day prior to said date twelve months later. The term "successive" means employment uninterrupted by separation from service.

Whenever a holiday listed in Section 6.1 falls within an employee's vacation period the employee shall receive an extra day's pay or a subsequent day off at the Employer's option.

All vacations shall be for calendar weeks, shall be taken consecutively unless otherwise agreed upon between the Employer and the employee and shall be subject to necessary scheduling by the Employer. Vacations of less than three weeks duration may not be split except in unusual cases and then only where the individual's application is approved by the Employer.

Vacations cannot be accumulated from one year of employment to another.

[fol. 100]

### Section 6.3 ABSENCES DUE TO INJURIES

Any regular full-time employee unable to work because of an accidental injury arising out of and in the course of his employment shall be entitled to receive 80% of 8 hours straight-time pay for each scheduled workday lost because of such injury in the first seven calendar days following the date of the accident, but not in excess of 80% of 40 hours straight-time pay; provided, however, that the employee shall report upon receipt of the injury to the Employer's physician whose decision with respect to the length of time required off shall be controlling; provided further, that nothing in this provision shall affect any rights ac-

crued to either party under the State Workmen's Compensation Act, and that the Employer shall receive credit for any payment made under this provision should compensation be awarded by the Industrial Commission of Illinois. The Employer agrees to attach to the employee's withholding tax statement Form W-2 a statement to support the exclusion of such pay from gross income under Sec. 105(d) of the Internal Revenue Code of 1954 and the regulations (Rev. Proc. 57-1, I.R.B. 1957-2) issued thereunder.

#### Section 6.4 FUNERAL LEAVE

The Employer agrees to pay full-time employees for necessary absence on account of death in the immediate family up to and including a maximum of three (3) scheduled workdays at straight-time, provided the employee attends the funeral. The term "immediate family" shall mean spouse, parent, child, brother, sister, father-in-law, mother-in-law, or any relative residing with the employee or with whom the employee is residing.

#### Section 6.5 JURY PAY

When any full-time employee who is covered by this agreement is summoned for jury service, he shall be excused from work for the days in which he reports for jury service and/or serves. He shall receive for each such day on which he so reports and/or serves and on which he otherwise would have worked the difference between eight (8) times his regular hourly rate of pay and the payment he receives for jury service, if any; provided, however, that no payment shall be made under the provisions of this Article to any employee summoned for jury service unless he shall have advised the Employer of the receipt by him of such jury summons not later than the next regularly scheduled workday after receipt of said summons. Before any payment shall be made to any employee hereunder, he shall present to the Employer proof of his summons for service, and of the time served and the amount of pay received therefor, if he shall have served as juror. The provisions of this Article shall apply only when an employee is sum-



moned for jury duty and shall not apply if an employee volunteers to serve as a juror. When an employee is released for a day or part of a day during any period of jury service, he shall report to his store for work.

[fol. 101]

## ARTICLE VII

### NO STRIKE; NO LOCKOUT

#### Section 7.1 No STRIKE; No LOCKOUT

The Union and the Employer agree on the need for the continuance of their service to the public without interruption. Both recognize this objective as necessary to the security of the Employer and its people. Both, therefore, specifically pledge themselves to help assure that security by using the procedures agreed upon between them for the adjustment of disputes and grievances in all cases where there is any difference of opinion concerning the rights of either under this contract or the interpretation or application of any provision of it. Therefore, during the term of this agreement there shall be no strikes, work stoppage, diminution or suspension of work of any kind whatsoever on the part of the Union or its membership; nor shall there be any lockout on the part of the Employer. No officer or representative of the Union shall authorize, instigate, aid or condone any strike, work stoppage, diminution or suspension of work of any kind whatsoever prohibited by the provisions of this section and no employee shall participate in any such prohibited activities.

[fol. 102]

## ARTICLE VIII

### GRIEVANCES AND ARBITRATION

#### Section 8.1 GRIEVANCES

- (1) *Grievance Defined:* A grievance is hereby defined as any dispute involving the interpretation or application of the provisions of the contract.
- (2) *Procedure:* A grievance may be initiated by any individual employee, by the Union or by the Employer.

- a) *Step One:* If initiated by or on behalf of an individual employee it shall be presented by the employee to the employee's immediate supervisor.
- b) *Step Two:* If not settled at the first level of supervision, the grievance shall be presented in writing to the next higher level of supervision by the employee and/or the union business agent.
- c) *Step Three:* If not settled at Step Two the grievance shall be presented in writing to such other representative as the Employer may designate.

Either the Union or the Employer may initiate a grievance by presenting it to the other party in writing.

- (3) *Time Limits on Grievances:* Any grievance involving a claim of improper discharge or other discipline shall be presented within fourteen (14) calendar days after such disciplinary action. Any grievance of any other nature must be made within thirty (30) calendar days from the date the grievance is alleged to have occurred.

Any grievance which is not expressly adjusted or dropped within twenty-one (21) calendar days of its initiation or presentment at any step or level in the grievance procedure shall be deemed to be abandoned unless the party submitting it shall appeal to the next higher step or level in the grievance procedure within said period of time; provided, however, that the parties may by mutual written consent extend said time limit.

[fol. 103]

## Section 8.2 ARBITRATION

- (1) No grievance involving a management right not abridged by a specific provision of this contract shall be arbitrable, but any grievance consisting of a dispute concerning the interpretation or application of this agreement except Article VII hereof which is submitted and carried forward in accordance with the grievance procedure provided in Section 8.1 and which was not satisfactorily adjusted in said procedure may be taken to arbitration by the Employer or the Union as hereby provided.

- (2) Either party may, within twenty-one (21) calendar days after failure to adjust the grievance in accordance with the grievance procedure serve upon the other party in the manner and the place provided in Section 1.3 a written demand for arbitration stating the issue to be arbitrated. The parties shall endeavor to select an impartial arbitrator within fifteen (15) calendar days after service of the demand for arbitration. However, if the parties fail to agree within this period upon an arbitrator who is willing and able to serve, either party may, within seven (7) calendar days thereafter, request either the American Arbitration Association or the Federal Mediation and Conciliation Service to submit a list of not less than five disinterested persons who are qualified and willing to act as impartial arbitrators. Upon receipt of this list, an authorized representative of the Union and of the Employer shall flip a coin to determine who shall have first choice to strike a name. The party winning the toss shall then strike a name from the panel, and then the parties shall alternately strike one name each until four names have been eliminated. The person whose name remains shall be the selected arbitrator.
- (3) The arbitrator shall commence hearings as quickly as possible after his selection and shall render his award in writing as quickly as reasonably possible after the hearing. The award of the arbitrator shall be rendered in writing together with his written findings and conclusions and shall be final and binding upon the parties to this agreement and upon the complaining employee or employees, if any.
- (4) For the purpose of entertaining a written request from either of the parties for rehearing to correct any material error of omission or commission, ambiguity, or question of application allegedly evident in the opinion or award the arbitrator shall, for a period of seven (7) calendar days next following the date of his award, retain jurisdiction of the matter submitted to arbitration by the parties hereto, and until the expiration of the period of time stated in this provision for rehear-

ing the award shall not be deemed to have been issued. If, however, no request for rehearing is duly filed within this seven day period, this award shall be deemed to be issued effective as of its date. A written request for rehearing shall detail the specific grounds relied upon for alleging a material error, or ambiguity, and a copy thereof shall be mailed by certified mail to the other party or parties. If the written request is postmarked no later than the 7th day next following the date of this award, it shall extend the jurisdiction of the arbitrator for a period of seven days next following the date of the written request.

[fol. 104]

Within those seven days the arbitrator, having reexamined the matter, shall in writing either reject the request for a rehearing or set a date for the requested rehearing. If the request for rehearing be denied, this award shall thereupon be deemed to be issued effective that date and the jurisdiction of the Arbitrator shall accordingly cease. If the request for rehearing be granted, the jurisdiction of the arbitrator shall continue until issuance of a final amended award incorporating or rejecting the substance of the allegations contained in the request.

- (5) The arbitrator shall have no power to determine arbitrability nor to add to, subtract from, modify, or amend any provision of this agreement, nor to substitute his discretion for the discretion of the Union or the Employer, change existing wage rates, or arbitrate proposals for the amendment or renewal of this agreement. No award shall be effective retroactively for more than thirty (30) days prior to the date at which the grievance was first presented pursuant to the grievance procedure provided in Section 8.1.
- (6) The arbitrator's fees and expenses, the cost of any hearing room and the cost of a shorthand reporter and of the original transcript shall be borne equally by the parties. All other cost and expense shall be borne by the party incurring them.

- (7) Any grievance that is not presented or processed within the time limits provided in this section shall be deemed abandoned unless such time limit or limits are extended or waived by mutual written consent of the parties.

[fol. 105]

## ARTICLE IX—TERM

### Section 9.1 INITIAL TERM

This Agreement shall become effective at 12:01 A.M., October 8, 1961 and shall expire at 12:00 midnight, October , 196 .

### Section 9.2 RENEWAL TERM

If either party wishes to modify or terminate this Agreement at its expiration, it shall serve notice in writing of such request upon the other party not less than sixty (60) days prior to the expiration date. In the absence of the service of such notice, this Contract shall automatically renew itself for a period of one year and from year to year thereafter, it being further agreed that the Contract expiration date shall be the first Saturday in October of each year.

### Section 9.3 POST-EXPIRATION NEGOTIATIONS

In the event either party notifies the other party of its desire to modify this agreement as provided in Section 9.1 and in the further event the parties have not reached agreement upon the terms of a new contract by the date of expiration of this contract, this contract shall continue in full force and effect after the date of expiration until either party terminates said contract as of 12:00 midnight on any Saturday by giving the other party not less than seven (7) days written notice of such termination.

EXECUTED this ..... day of....., 19.....



UNION:

LOCAL 546, AMALGAMATED MEAT  
CUTTERS AND BUTCHER WORK-  
MEN OF NORTH AMERICA, AFL-  
CIOBy .....  
PresidentBy .....  
Secretary-Treasurer

EMPLOYER:

By .....

Employer's Address:

[fol. 106]

APPENDIX A to 1961 - 196 CONTRACT  
BetweenLOCAL 546, Amalgamated Meat Cutters and  
Butcher Workmen of North America  
and.....  
Employer

## Section A.1 WAGE RATES

Head Meat Cutter

Journeyman

Apprentices:

0 to 6 months

6 to 12 "

12 to 18 "

18 to 24 "

24 to 36 "

Meat Clerks:

0 to 6 months

6 to 12 "

12 to 18 "

18 to 24 "

After 24 "

[fol. 107]

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANTS' EXHIBIT 39

DOCKETED  
MEMORANDUM OF SETTLEMENT AGREEMENT  
REACHED NOVEMBER 16, 1961

BETWEEN

THE UNION'S NEGOTIATION COMMITTEE  
REPRESENTING MEAT CUTTER LOCALS  
189, 262, 320, 571, 546, 547 and 638

AND

THE EMPLOYERS OF THE UNION MEMBERS  
OF SAID LOCALS

The parties, except Jewel Tea Co., Inc., agree to continue the substantive provisions of the existing service and self-service contracts of all Locals except 189, except as noted, the exact language to be worked out at a contract drafting language session, with the following changes:

1. The term shall be three years commencing October 8, 1961 and ending October 3, 1964.
2. The definition of "Journeyman" shall be reworded to read as follows:

*Journeyman*: After serving three years of apprenticeship (two and one-half (2½) years if the apprentice furnishes the Employer with a Certificate issued by the Washburne Trade School that he has satisfactorily completed the full meat training course of said school), an employee, provided he can satisfactorily perform all the functions of a Journeyman, shall be classified as a Journeyman Meat Cutter and shall be paid the Journeyman rate of pay. (Union Demand 3d)

3. Insert the following section in Article I—General:

*Section ..... Effective Date*

Unless the context of a provision indicates otherwise, all provisions of the contract become effective upon the date of execution of the contract.

4. Revise the Union Security clause to conform with NLRB rulings, the language to read substantially as follows:

It shall be a condition of employment that all employees of the Employer covered by this agreement who are members of the Union in good standing on the effective date of this agreement (the term "effective date" being defined in Article I, Section ..... ) shall remain members in good standing and those who are not members on the effective date of this agreement shall, on the 31st day following the effective date of this agreement, become and remain members in good standing in the Union. It shall also be a condition of employment that all employees covered by this agreement and hired on or after its effective date shall, on the 31st day following the beginning of such employment become and remain members in good standing in the Union. (Union Demand #14)

5. Make the following changes recommended by counsel for the Union:

a) Recommendation #2—Eliminate Section 1 of Article VII.

b) Recommendation #3—Eliminate Section 3 of Article VII.

c) Recommendation #4—Change the last sentence of Section 4 of Article VII to read as follows:

[fol. 108] "Business representatives shall have full authority to request the immediate discharge of any employee who has voluntarily agreed with his Employer to receive wages below the wage scale fixed herein."

d) Recommendation #5—Eliminate the last sentence of Section 5 of Article VII.

- e) Recommendation #6—Revise the Arbitration Article to provide that the arbitrator's decision shall be binding upon the grievant *employee*; as well as the Union and the Employer.
- 6. Revise the Vacation provision to reflect the following changes:
  - a) Effective January 1, 1962—four (4) weeks vacation after 20 years of continuous full-time service.
  - b) Vacation pay shall be calculated on the rate being paid at the time the vacation is taken. (Union Demand 7c)
  - c) The vacation schedule shall be posted in each market. When a change in vacation becomes necessary the Employer and the employee involved shall be given reasonable advance notice of such change. (Union Demand 7d)
- 7. A mutually acceptable seniority provision is to be worked out and made applicable to the contract effective beginning with the second year of the contract.
- 8. Clarification of the Employer's right to sell poultry on Sundays and holidays, with both contract language and method of sale to be agreed upon.
- 9. Union agrees to set up a committee to study the Employer's request for the right to operate Service Delicatessen Departments in Self-Service Markets after 6:00 P.M. and on Sundays with the view of making such provision operable by July 1, 1962.
- 10. Ratio of Apprentices to Journeymen to be changed from 2-to-5 to 3-to-7.
- 11. *Health and Welfare Option*  
 Effective October 1, 1962 the Employer shall pay into a jointly-administered health and welfare trust fund, the sum of Twenty-One Dollars (\$21.00) per month for each full-time employee covered by this contract.  
 If a majority of the Employer's full-time employees shall elect to remain in the Employer's plan in effect

on October 7, 1961 on a cost-free basis except as to [fol. 109] optional coverages, the Employer may continue to operate such plan on such cost-free basis, and in such event the Employer shall not be required to contribute to the jointly-administered health and welfare trust fund.

12. Increase weekly contract wage rates as follows:

	1st Year	2nd Year	3rd Year
Head Meat Cutters ..	\$5.00	—	\$5.00
Journeymen .....	5.00	—	5.00
Apprentices:			
0 - 6 months .....	—	—	—
6 - 12 " .....	1.00	—	1.00
12 - 18 " .....	2.00	—	2.00
18 - 24 " .....	3.00	—	3.00
24 - 36 " .....	4.00	—	4.00

Extra Help—To be increased pro-rata.

13. With respect to Local 189 the negotiating committees agreed:

- a) To work out a schedule for reducing the workweek in Groups 3 and 4 cities from 42½ hours to 40 hours and in Decatur (Group 3A) from 45½ to 43 hours over the last two years of the contract term.
- b) To continue negotiating on November 21, 1961 in an effort to reach agreement on all contract changes.

[fol. 110] 14. Jewel Tea Co., Inc. joins in the agreement reached between the negotiating committees for the affiliated local unions and the industry as set out in Items 1 to 13, inclusive, of this memorandum of agreement except as follows:

- a) Jewel objects to the continuance in all contracts of all provisions prescribing and restricting the hours during which meats and meat products may be sold as constituting an illegal restraint of trade.
- b) Jewel offers to enter into contracts with all Locals, including Groups 1 and 1A of Local 189, providing



for unlimited hours of market operation on the terms and conditions contained in either Jewel Offer No. 1 or Jewel Offer No. 2 set forth in a letter dated November 13, 1961 and delivered to the respective local unions on November 16, 1961, except as modified under 14 c) hereof with respect to Health and Welfare benefits.

- c) Jewel offers in lieu of the Health and Welfare Option agreed upon between the Union Locals and the industry the following option, and its letter of November 13, 1961 referred to under 14 b) hereof is hereby modified accordingly.

*Health and Welfare Option Offered by  
Jewel Tea Co., Inc. 11/16/61*

Effective October 1, 1962 the Employer agrees to provide each full-time employee covered by this contract who has completed his probationary period with health and welfare benefits in accordance with the provisions of whichever of the following alternative plans is approved by the Employer's full-time employees covered by this contract:

*Jointly Administered Health and  
Welfare Trust Fund*

Health and welfare benefits to be provided under a jointly administered health and welfare trust fund to be established by the parties hereto pursuant to a health and welfare trust agreement to be hereafter executed under the terms of which trust agreement the Employer shall pay to the health and welfare trust fund the sum of Twenty-One and no/100ths Dollars (\$21.00) per month for each full-time employee covered by this contract. Said Employer payments shall commence on the effective date of this provision with respect to all full-time employees who have completed their probationary period and on the first of the month following the completion of their probationary period with respect to all other full-time employees, and shall cease upon termination of their employment.

Payment by the Employer into this trust fund shall be in lieu of all Employer established plans or programs, including sickness and accident disability pay, hospital, medical and surgical care, major medical expense and group life and accident insurance, each of which programs shall automatically terminate on the effective date hereof.

○ [fol. 111] *Employer's Benefits Plan*

The health and welfare benefits provided in the Employer's health and welfare plan or plans in effect on October 7, 1961, such plan to be administered and financed in accordance with the rules and conditions contained therein.

The Union and the Employer shall make the necessary arrangements to conduct an election by secret ballot as promptly as possible following the ratification of this contract by the Union membership to determine the preference of the majority of the Employer's full-time employees covered by this contract. The decision of such majority shall be binding upon the Employer, the Union and the employees involved for the duration of this contract. In the event the Employer does not have a health and welfare program in effect on October 7, 1961, then the employees of said Employer shall be deemed to have elected to be covered under the Jointly Administered Health and Welfare Trust Fund.

This Memorandum of Agreement executed this ..... day of November, 1961.

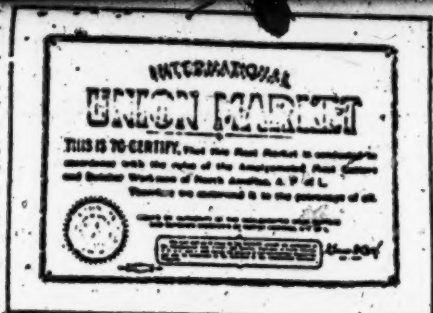
Negotiating Committee  
Representing Local  
Unions 189, 262, 320,  
571, 547 and 638

.....  
Chairman  
.....

Negotiating Committee  
Representing Employers

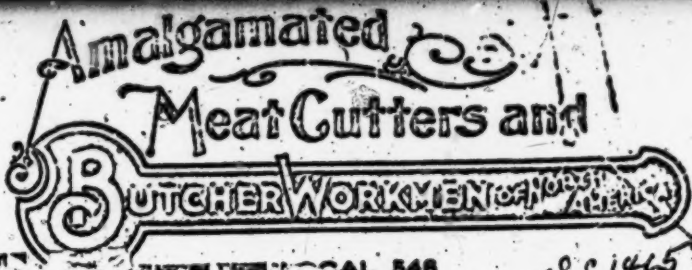
.....  
Chairman  
.....





Affiliated with  
American Federation of  
Labor  
and  
Chicago Federation of  
Labor

M. J. KELLY, SEC. TREAS.  
166 W. WASHINGTON ST.  
ROOM 307  
CHICAGO  
PHONE 2-1121



MAY 28 1963

ARTICLES OF AGREEMENT governing Meat Cutters in Retail Meat Markets in the City of Chicago, Illinois, and Suburbs, entered into between Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 546, and the Chicago Federation of Labor. ELBERT A. WAGNER, CLERK

Article 1. Nine hours shall constitute the basic working day, hours shall be 8 A. M. to 6 P. M. excepting Saturdays and days preceding holidays beginning at 8 A. M. and quitting at 9 P. M., allowing one hour for dinner and one-half hour for supper. Employees must be dressed and ready for work at 8 A. M.

Article 2. It is expressly understood that no customers will be served who come into the market after 6 P. M. and 9 P. M. on Saturdays and on days preceding holidays, that all customers in the shop at the closing hour be served, that all meats be properly taken care of and markets placed in a sanitary condition, such work not to be construed as overtime. Overtime to be limited to one hour every day and shall be performed behind locked doors at the rate of \$1.50 per hour. Employees are required to notify the Secretary of Local No. 546 of such overtime.

Article 3. There shall be no work on Sundays, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day or New Year's Day.

#### MANAGER'S CLAUSE

Article 4. Managers shall not be required to become members of Local No. 546 or Employees Association. The word manager is to be construed to mean anyone who is authorized to hire and discharge men and has two or more journeymen working under his direction. Managers who are already affiliated with Local No. 546, A. M. C. & B. W. of N. A. will retain their membership in said Local.

Article 5. All journeymen meat cutters shall receive not less than Forty Dollars (\$40.00) per week as a minimum wage. Any man receiving above the minimum shall not be reduced in hours, wages or conditions.

Article 6. Extra men not to receive less than \$7.00 for Fridays, and \$10.00 for Saturdays, unless they work the full week, when they are to receive the regular salary of the permanent meat cutters whose place they are filling.

#### APPRENTICE CLAUSE

Article 7. In markets where three or more journeymen meat cutters are employed, one apprentice is permitted and an additional apprentice for each four journeymen meat cutters.

Scale of wages for apprentices shall be as follows:

First Six Months' Period	\$15.00
Second Six Months' Period	17.00
Third Six Months' Period	19.00
Fourth Six Months' Period	21.00
Fifth Six Months' Period	25.00
Sixth Six Months' Period	28.00

and after having served three years of apprenticeship, they shall be classified as journeymen meat cutters, and shall receive the prevailing scale of wages. Apprentices cannot quit any employer before finishing apprenticeship unless employer agrees to such a change.

Article 7, Section 2. Apprentices must be 16 years of age and not over 20 and as such need not be required to pay initiation fee into Local No. 546.

Article 8. When in need of help, employers shall give preference to members in good standing of Local No. 546, A. M. C. & B. W. of N. A. When non-union men are employed they shall file application for membership in Local No. 546 not later than one day after date of employment. No employee to be discharged without good and sufficient cause. Dishonesty, incompetency, incivility, or an over-supply of help will be sufficient cause for dismissal, or help can be dismissed provided preference is given to union help in replacing men.

Article 9. The market card must be displayed in all places where Local No. 546 are employed and agreement signed.

Article 10. This agreement expires October 31, 1921. Any alteration that may be desired by either party to this agreement at the time of its expiration must be made known not later than thirty days prior to its expiration. If neither party serves notice for a change in this agreement at its expiration, it shall automatically extend

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meats will be properly taken care of and the market placed in a sanitary condition, such work not to be construed as overtime. Overtime may be worked on the second day before Thanksgiving Day, Christmas Day and New Year's Day, when employees may work such overtime as may be required at the rate of Time and One-half per hour. Such work to be performed behind locked doors.

(b) Employees shall not take inventory outside of regular working hours.

#### APPRENTICE CLAUSE

ARTICLE VIII. (a) In markets where three (3) or more journeymen are employed one (1) apprentice is permitted and an additional apprentice for every three (3) meat cutters.

Scale of apprentices to be as follows:

First year	\$22.50
Second year	27.50
Third year	32.50

(b) After completing two (2) years of apprenticeship they shall be classified as improver apprentices, and after serving three (3) years of apprenticeship they shall be classified as journeymen meat cutters and shall receive the prevailing scale of wages.

(c) Apprentices shall not work part time or as extra men on Saturdays, or the day preceding holidays. Apprentices must be at least sixteen (16) years of age.

ARTICLE IX. (a) When in need of help, employers must give preference to members in good standing of Local 546.

(b) The employer agrees to employ and keep in employment only such persons who are members in good standing of the said Union. All new employees employed by the employer shall, after the effective date of this agreement, within thirty (30) days, become members of the Union, and shall be required to remain members in good standing as a condition of the continuation of their employment. The employer agrees that, upon written notice from the Union, they will discharge, at the Union's request, any person, within a period of fifteen (15) days, who shall not be in good standing.

(c) Business representatives have full authority and approval from both parties to this agreement to immediately remove and require the discharge of any men working beneath the scale fixed herein.

(d) No employee shall be discharged without good and sufficient cause; drunkenness, dishonesty, incompetency, incivility or an over supply of help will be sufficient cause for dismissal, or help can be dismissed providing preference be given to Union men in replacing help.

ARTICLE X. It will be the duty of the employer to prominently display Union shop cards in all establishments wherein union meat cutters are employed. These shop cards shall remain the property of the Union, and the employer shall have their usage only until such time as the Union shall request their return.

ARTICLE XI. This agreement remains in full force and effect until September 30th, 1942. Any alteration that may be desired by either party to this agreement at the time of expiration must be made in writing not later than thirty (30) days prior to its expiration. In case neither party serves notice for a change in this agreement, at its expiration, it shall automatically renew itself to September 30th, 1943.

ARTICLE XII. If through any cause whatever the adoption of this agreement be delayed later than October 31st, 1941, it shall become retroactive to October 1st, 1941.

ARTICLE XIII. This agreement to be kept posted in the place of employment so that every employee may have equal and easy access to same.

ARTICLE XIV. Laundry, tools and sharpening of tools to be furnished free of cost by employers.

ARTICLE XV. During the months of November, December, January, February and March, on days when the temperature is below freezing, store doors will remain closed and all possible protection given employee's health.

ARTICLE XVI. Employees agree not to negotiate with any but the duly elected officers of Local 546 and further agree not to make a contract with anyone not affiliated with Local 546 and affiliated Locals.

ARTICLE XVII. Any member of Local 546 who is in good standing and is in business for himself who may desire to affiliate with the \_\_\_\_\_ may apply for a withdrawal card, provided the request be accompanied by similar request from the \_\_\_\_\_. Withdrawal card may be obtained upon application to the Executive Board of Local 546.

ARTICLE XVIII. ARBITRATION CLAUSE. All grievances which cannot be adjusted by Local 546 and employers shall be referred to an arbitration board consisting of two (2) members to be named by employees, two (2) by the affected employers and one (1) to be agreed upon by the four already selected. No strike to be called when arbitration has been requested by either party, provided that the dispute has been heard and decided within a thirty (30) days period from submission.

ARTICLE XIX. Local 546 will furnish men who will work to the best interest of the employers in every way, fast and lawful, who will give honest and diligent service to patron of the employer's establishment, who will do everything within their power for the uplifting of the meat industry.

ARTICLE XX. The self service system of meat merchandizing will be considered a violation of this agreement. The parties hereto certify that they are empowered and duly authorized to sign this agreement.

SIGNED FOR LOCAL 546 and AFFILIATED LOCALS  
AMALGAMATED MEAT CUTTERS AND BUTCHER  
WORKMEN OF NORTH AMERICA, A. F. of L.

President: \_\_\_\_\_

Sec. Treas.: \_\_\_\_\_

EMPLOYER: \_\_\_\_\_

Address: \_\_\_\_\_

DATED: \_\_\_\_\_ 1942

[fol. 113]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
DEFENDANTS' EXHIBIT 40C



& B. W. of N. A. will retain their membership in said Local.

Article 5. All journeymen meat cutters shall receive not less than Forty Dollars (\$40.00) per week as a minimum wage. Any man receiving above the minimum shall not be reduced in hours, wages or conditions.

Article 6. Extra men not to receive less than \$7.00 for Fridays, and \$10.00 for Saturdays, unless they work the full week, when they are to receive the regular salary of the permanent meat cutters whose place they are filling.

#### APPRENTICE CLAUSE

Article 7. In markets where three or more journeymen meat cutters are employed, one apprentice is permitted and an additional apprentice for each four journeymen meat cutters.

Scale of wages for apprentices shall be as follows:

First Six Months' Period.....	\$15.00
Second Six Months' Period.....	17.00
Third Six Months' Period.....	19.00
Fourth Six Months' Period.....	21.00
Fifth Six Months' Period.....	25.00
Sixth Six Months' Period.....	28.00

and after having served three years of apprenticeship, they shall be classified as journeymen meat cutters, and shall receive the prevailing scale of wages. Apprentices cannot quit any employer before finishing apprenticeship unless employer agrees to such a change.

Article 7, Section 2. Apprentices must be 16 years of age and not over 20 and as such need not be required to pay initiation fee into Local No. 546.

Article 8. When in need of help, employers shall give preference to members in good standing of Local No. 546, A. M. C. & B. W. of N. A. When non-union men are employed they shall file application for membership in Local No. 546 not later than one day after date of employment. No employee to be discharged without good and sufficient cause. Dishonesty, incompetency, incivility, or an over-supply of help will be sufficient cause for dismissal, or help can be dismissed provided preference is given to union help in replacing men.

Article 9. The market card must be displayed in all places where Local No. 546 are employed and agreement signed.

Article 10. This agreement expires October 31, 1921. Any alteration that may be desired by either party to this agreement at the time of its expiration must be made known not later than thirty days prior to its expiration. In case neither party serves notice for a change in this agreement at its expiration, it shall automatically extend until such notice is given by either party.

Article 11. If through any cause whatever, the adoption of this agreement be delayed later than November 1, 1920, it shall become retroactive to November 1, 1920.

Article 12. This agreement to be posted in place of employment so that every employee shall have equal and easy access to same.

Article 13. Laundry to be furnished free of cost by employer.

Article 14. During the months of November, December, January, February and March, on the days that the temperature is below freezing in the market the doors will remain closed and all possible protection to be given to employees' health.

#### ARBITRATION CLAUSE

Article 15. All grievances which cannot be settled by Local No. 546 and the employers shall be referred to an arbitration board, consisting of two members to be named by the employees, two by the affected employer, and one to be agreed upon by the four already selected. No strike shall be called when arbitration has been requested by either party. All grievances must be settled within 30 days.

Members of Local 546 agree to further the good-will and best interests of their employers at all times.

Signed for Local 546, A. M. C. & B. W. of N. A.

*P C Smith*  
*M J Kelly*  
*W W Miller*  
*9 carbarn*  
Employer

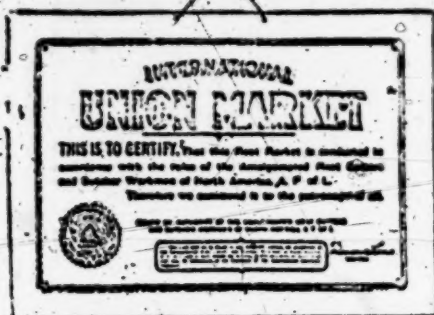
*Carl Schmidt* President.

*M J Kelly* Secretary-Treasurer.

[fol. 112]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANTS' EXHIBIT 40



# AMALGAMATED MEAT CUTTERS AND B. W. OF N. A.

JAMES F. LAVERTY  
Sec. - Treas. Local 546  
Int'l. First Vice-Pres.  
130 N. WELLS ST.  
Room 1613  
Franklin, Ill.

Affiliated with  
American Federation of Labor  
Illinois Federation of Labor  
Chicago Federation of Labor

LOCAL 546 MAY 28 1963

Regular Meetings Every 2nd Tuesday Night at  
Musicians' Hall, 175 W. Washington St.  
at 8 O'CLOCK

ELBERT A. WAGNER, JR.  
CLERK

1937-1938

CHICAGO

ARTICLES OF AGREEMENT governing Meat Markets in the City of Chicago and County of Cook, entered into between

## X The Great Atlantic & Pacific Tea Company

all Meat Markets and Chain Store Meat Markets, all combination Grocery and Meat Markets in Chicago and County of Cook, and the Amalgamated Meat Cutters and Butcher Workmen of North America, LOCAL 546 and affiliated Locals, A. F. of L.

This contract approved and passed by the International Executive Board at the General Office the 22nd day of September, 1937.

Article 1. Eight and one-half (8½) hours shall constitute the basic work day. Work to begin at 8:30 A. M. and stop at 6 P. M.; excepting on Saturdays and the day preceding holidays, when work shall begin at 8:30 A. M. and stop at 7 P. M., allowing one (1) full hour for dinner each day. Employees must be dressed and ready for work at 8:30 A. M.

Article 2. There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day.

Article 3. (a) All Journeymen meat cutters shall receive not less than FORTY-TWO DOLLARS AND FIFTY CENTS (\$42.50) weekly as a minimum wage. Any man receiving above the minimum shall not be reduced in hours, wages or conditions.

(b) Any employee who has given faithful and diligent service for the course of one (1) year shall be entitled to one week's vacation with pay. In case of dispute the matter will be left to the Executive Board of Local 546.

(c) Extra men to receive not less than Eight Dollars (\$8.00) for all days, excepting Saturday and the day preceding holidays, when they shall receive ~~not less than \$10.00~~ unless they work the full week when they are to receive the regular salary of the permanent meat cutters whose places they are filling.

### MANAGER'S CLAUSE

Article 4. The term Manager shall be construed to mean a journeymen meat cutter, who is responsible for the efficient management of the market and shall receive not less than FORTY-SEVEN DOLLARS AND FIFTY CENTS (\$47.50) weekly

Article 5. It is expressly understood that no customer shall be served who comes into the market after 6 P. M. on Monday, Tuesday, Wednesday, Thursday, Friday and 7 P. M. Saturday and the day preceding holidays; that all customers in the shop at the closing hour shall be served. That all meats will be properly taken care of and the markets placed in a sanitary condition, such work not to exceed fifteen minutes and not to be construed as overtime. Overtime may be worked on the second day before Thanksgiving, Christmas and New Years, when employees may work such overtime as may be required at the rate of \$1.50 per hour, such work to be performed behind locked doors.

### APPRENTICE CLAUSE

Article 6. (a) In markets where three (3) or more journeymen are employed one (1) apprentice is permitted and an additional apprentice for every three (3) meat cutters.

### SCALE OF APPRENTICES' TO BE AS FOLLOWS:

First year .....	\$20.00
Second year .....	\$25.00
Third year .....	\$30.00

(b) After completing two (2) years of apprenticeship they shall be classified as improver apprentices, and after serving three (3) years of apprenticeship they shall be classified as journeymen meat cutters and shall receive the prevailing scale of wages.

(c) Apprentices shall not work part time or as extra men on Saturdays, or the day preceding holidays. Apprentices must be sixteen (16) years of age or over and shall pay initiation fees to Local 546.

Article 7. (a) When in need of help employers must give preference to members in good standing of Local 546.

(b) No employee shall be discharged without good and sufficient cause, dishonesty, incompetency, incivility or an over supply of help will be sufficient cause for dismissal, or help can be dismissed providing preference be given to union men in replacing help.

Article 8. This agreement expires September 30, 1938. Any alteration that may be desired by either party to this agreement at the time of expiration must be made known not later than Thirty (30) days prior to its expiration. In case neither party serves notice for a change in this agreement, at its expiration, it shall automatically extend to September 30, 1939.

Article 9. If through any cause whatever the adoption of this agreement be delayed not later than October 31, 1937 it shall become retroactive to October 1, 1937.

Article 10. This agreement to be posted in place of employment so that every employee may have equal and easy access



Article 3. (a) All Journeymen meat cutters shall receive a minimum wage of \$42.50 weekly as a minimum wage. Any man receiving above the minimum shall not be reduced in any conditions.

(b) Any employee who has given faithful and diligent service for the course of one (1) year shall be entitled to one week's vacation with pay. In case of dispute the matter will be left to the Executive Board of Local 546.

(c) Extra men to receive not less than Eight Dollars (\$8.00) for all days, excepting Saturday and the day preceding holidays, when they shall receive \$10.00 unless they work the full week when they are to receive the regular salary of the permanent meat cutters whose places they are filling.

#### MANAGER'S CLAUSE

Article 4. The term Manager shall be construed to mean a journeymen meat cutter, who is responsible for the efficient management of the market and shall receive not less than FORTY-SEVEN DOLLARS AND FIFTY CENTS (\$47.50) weekly.

Article 5. It is expressly understood that no customer shall be served who comes into the market after 6 P. M. on Monday, Tuesday, Wednesday, Thursday, Friday and 7 P. M. Saturday and the day preceding holidays; that all customers in the shop at the closing hour shall be served. That all meats will be properly taken care of and the markets placed in a sanitary condition, such work not to exceed fifteen minutes and not to be construed as overtime. Overtime may be worked on the second day before Thanksgiving, Christmas and New Years, when employes may work such overtime as may be required at the rate of \$1.50 per hour, such work to be performed behind locked doors.

#### APPRENTICE CLAUSE

Article 6. (a) In markets where three (3) or more journeymen are employed one (1) apprentice is permitted and an additional apprentice for every three (3) meat cutters.

#### SCALE OF APPRENTICES' TO BE AS FOLLOWS:

First year	\$20.00
Second year	\$25.00
Third year	\$30.00

(b) After completing two (2) years of apprenticeship they shall be classified as improver apprentices, and after serving three (3) years of apprenticeship they shall be classified as journeymen meat cutters and shall receive the prevailing scale of wages.

(c) Apprentices shall not work part time or as extra men on Saturdays, or the day preceding holidays. Apprentices must be sixteen (16) years of age or over and shall pay initiation fees to Local 546.

Article 7. (a) When in need of help employers must give preference to members in good standing of Local 546.

(b) No employee shall be discharged without good and sufficient cause, dishonesty, incompetency, incivility or an over supply of help will be sufficient cause for dismissal, as help can be dismissed providing preference be given to union men in replacing help.

Article 8. This agreement expires September 30, 1938. Any alteration that may be desired by either party to this agreement at the time of expiration must be made known not later than thirty (30) days prior to its expiration. In case neither party serves notice for a change in this agreement, at its expiration, it shall automatically extend to September 30, 1939.

Article 9. If through any cause whatever the adoption of this agreement be delayed not later than October 31, 1937 it shall become retroactive to October 1, 1937.

Article 10. This agreement to be posted in place of employment so that every employe may have equal and easy access to same.

Article 11. Laundry, tools and sharpening of tools to be furnished free of cost by employers.

Article 12. During the months of November, December, January, February and March, on days when the temperature is below freezing store doors will remain closed and all possible protection given employe's health.

Article 13. ☒ The Great Atlantic & Pacific Tea Company

agree not to negotiate with any but the duly elected officers of Local 546 and further agree not to make a contract with any one not affiliated with Local 546 and affiliated Locals.

Article 14. Forty-Two Dollars Fifty Cents (\$42.50) shall mean Forty-Two Dollars and Fifty Cents.

The Great Atlantic & Pacific Tea Company

will give full co-operation to Local 546 and affiliated Locals, in any reasonable action that they may take against members or Meat Dealers for violations of the wage provision or other conditions of this contract. Arbitration in this case is not necessary.

#### ARBITRATION CLAUSE

Article 15. All grievances which cannot be adjusted by Local 546 and employers shall be referred to an arbitration board consisting of two (2) members to be named by employees, two (2) by the affected employers and one (1) to be agreed upon by the four already selected. No strike to be called when arbitration has been requested by either party.

Article 16. Local 546 will furnish men who will work to the best interest of the employers in every way, just and lawful, who will give honest and diligent service to patrons of the employer's establishment, will do everything within their power looking for the uplifting of the meat industry.

SIGNED FOR LOCAL 546 and AFFILIATED LOCALS  
AMALGAMATED MEAT CUTTERS AND BUTCHER  
WORKMEN OF NORTH AMERICA, A. F. of L.

President

Sec'y-Treas.

Employer ☒ The Great Atlantic & Pacific Tea Company

Employee

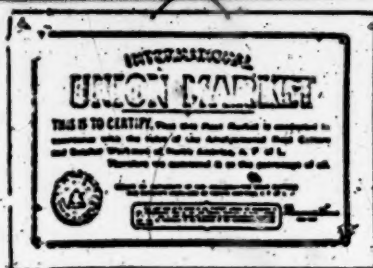
Date

2/18

1937

1938

[Vol. 113]  
IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
DEFENDANTS' EXHIBIT 46A



# AMALGAMATED MEAT CUTTERS AND B. W. OF N. A.

**EMMETT KELLY**  
Sec.-Treas. Local 546  
128 N. WELLS ST.  
Room 1615  
Franklin 0030

Affiliated with  
American Federation of Labor  
Illinois Federation of Labor  
Chicago Federation of Labor

*Def. in ex. 40B*

**FILED**  
**LOCAL 546**

Regular Meetings Every 2nd Tuesday Night at  
Meat Cutters Hall, 128 N. Wells St.

**MAY 28 1963**

**CHICAGO**

AT **O'CLOCK**  
**CLERK**

**ARTICLES OF AGREEMENT governing Meat Markets in the city of Chicago and**

all Meat Markets and Chain Store Meat Markets, all combination Grocery and Meat Markets in Chicago and County of Cook, and the Amalgamated Meat Cutters and Butcher Workmen of North America, LOCAL 546 and affiliated Locals, A. F. of L.  
This contract approved and passed by the International Executive Board at the General Office the 14th day of November, 1940.  
Article 1. Eight and one-half hours shall constitute the basic work day. Work to begin at 8:30 A. M. and stop at 6:00 P. M., allowing one hour for lunch. Employees must be dressed and ready for work at 8:30 A. M.  
Article 2. There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Armistice Day, Thanksgiving Day, Christmas Day, and New Year's Day.  
Article 3. (a) All Journeymen meat cutters shall receive not less than **FORTY-TWO DOLLARS AND FIFTY CENTS (\$42.50)** weekly as a minimum wage. Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages, or working conditions.  
(b) Any employee who has given diligent and faithful service for the course of one year shall be entitled to one week's vacation with pay. After three years service he shall be entitled to two week's vacation with pay. In case of dispute the matter shall be left to the Executive Board of Local 546.  
(c) Extra men to receive not less than **Eight Dollars (\$8.00)** for all days, excepting Saturday and the day preceding holidays, when they shall receive **Nine Dollars (\$9.00)**, unless they work the full week when they are to receive the regular salary of the permanent meat cutters whose places they are filling.

## MANAGER'S CLAUSE

Article 4. The term Manager shall be construed to mean a journeyman meat cutter, who is responsible for the efficient management of the market and shall receive not less than **FORTY-SEVEN DOLLARS AND FIFTY CENTS (\$47.50)** weekly.  
Article 5. It is expressly understood that no customer shall be served who comes into the market before 8:30 A. M. or after 6:00 P. M.; that all customers in the market at the closing hour shall be served; that all meats will be properly taken care of and the market placed in a sanitary condition. Such work not to exceed fifteen minutes and not to be construed as overtime. Overtime may be placed on the second day before Thanksgiving Day, Christmas Day, and New Year's Day when employees may work such overtime as may be required at the rate of **ONE DOLLAR AND FIFTY CENTS (\$1.50)** per hour. Such work to be performed behind locked doors.

## APPRENTICE CLAUSE

Article 6. (a) In markets where three (3) or more journeymen are employed one (1) apprentice is permitted and an additional apprentice for every three (3) meat cutters.

### SCALE OF APPRENTICES TO BE AS FOLLOWS:

First year	\$20.00
Second year	25.00
Third year	30.00

(b) After completing two (2) years of apprenticeship they shall be classified as improved apprentices, and after serving three (3) years of apprenticeship they shall be classified as journeymen meat cutters and shall receive the prevailing scale of wages.  
(c) Apprentices shall not work part time or as extra men on Saturdays, or the day preceding holidays. Apprentices must be sixteen (16) years of age or over and shall pay initiation fees to Local 546.

Article 7. (a) When in need of help employers must give preference to members in good standing of Local 546.  
(b) No employee shall be discharged without good and sufficient cause, drunkenness, dishonesty, incompetency, incivility or any other supply of help will be sufficient cause for dismissal, or help can be dismissed providing preference be given to union men in replacing help.

Article 8. This agreement expires September 30th, 1941. Any alteration that may be desired by either party to this agreement at the time of expiration must be made known not later than Thirty (30) days prior to its expiration. In case neither party serves notice for a change in this agreement, at its expiration it shall automatically extend to **SEPTEMBER 30th, 1942**.

Article 9. If through any cause whatever the adoption of this agreement be delayed later than October 31st, 1940, it shall become retroactive to October 1st, 1940.

Article 10. This agreement to be posted in place of employment so that every employee may have equal and easy access to same.

Article 11. Laundry, tools and sharpening of tools to be furnished free of cost by employers.  
Article 12. During the months of November, December, January, February, and March on days when the temperature is below freezing, store doors will remain closed and all possible protection given employee's health.

Article 13. agree not to negotiate with any but the duly elected officers of Local 546 and further agree not to make a contract with anyone not affiliated with Local 546 and affiliated Locals.

Article 14. Any member of Local 546 who is in good standing and is in business for himself who may desire to affiliate with the ..... may apply for a withdrawal card, provided the request be accompanied by similar request from the ..... Withdrawal card may be obtained upon application to the Executive Board of Local 546.

## ARBITRATION CLAUSE



# SCALE OF APPRENTICES' TO BE AS FOLLOWS:

First year	\$20.00
Second year	25.00
Third year	30.00

(b) After completing two (2) years of apprenticeship they shall be classified as improved apprentices, and after serving three (3) years of apprenticeship they shall be classified as journeymen meat cutters and shall receive the prevailing scale of wages.

(c) Apprentices shall not work part time or as extra men on Saturdays, or the day preceding holidays. Apprentices must be sixteen (16) years of age or over and shall pay initiation fees to Local 546.

Article 7. (a) When in need of help employers must give preference to members in good standing of Local 546.  
(b) No employe shall be discharged without good and sufficient cause, drunkenness, dishonesty, incompetency, incivility or as over supply of help will be sufficient cause for dismissal, or help can be dismissed providing preference be given to union men in replacing help.

Article 8. This agreement expires September 30th, 1941. Any alteration that may be desired by either party to this agreement at the time of expiration must be made known not later than Thirty (30) days prior to its expiration. In case neither party serves notice for a change in this agreement, at its expiration it shall automatically extend to SEPTEMBER 30th, 1942.

Article 9. If through any cause whatever the adoption of this agreement be delayed later than October 31st, 1940, it shall become retroactive to October 1st, 1940.

Article 10. This agreement to be posted in place of employment so that every employee may have equal and easy access to same.

Article 11. Laundry, tools and sharpening of tools to be furnished free of cost by employers.

Article 12. During the months of November, December, January, February, and March on days when the temperature is below freezing, store doors will remain closed and all possible protection given employee's health.

Article 13. Agree not to negotiate with any but the duly elected officers of Local 546 and further agree not to make a contract with anyone not affiliated with Local 546 and affiliated Locals.

Article 14. Any member of Local 546 who is in good standing and is in business for himself who may desire to affiliate with the \_\_\_\_\_ may apply for a withdrawal card, provided the request

be accompanied by similar request from the \_\_\_\_\_ Withdrawal card may be obtained upon application to the Executive Board of Local 546.

## ARBITRATION CLAUSE

Article 15. All grievances which cannot be adjusted by Local 546 and employers shall be referred to an arbitration board consisting of two (2) members to be named by employees, two (2) by the affected employers and one (1) to be agreed upon by the four already selected. No strike to be called when arbitration has been requested by either party.

Article 16. Local 546 will furnish men who will work to the best interest of the employers in every way, just and lawful, who will give honest and diligent service to patrons of the employers' establishment, who will do everything within their power for the uplifting of the meat industry.

SIGNED FOR LOCAL 546 and AFFILIATED LOCALS  
AMALGAMATED MEAT CUTTERS AND BUTCHER..  
WORKMEN OF NORTH AMERICA, A. F. of L.

President William C. Gaff  
Sec'y-Treas Edmund Kelly

JEWEL FOOD STORES

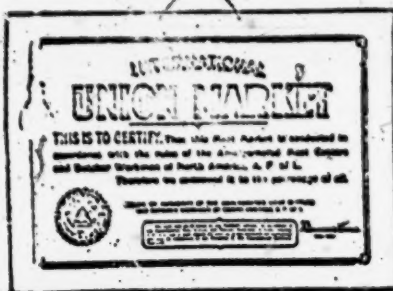
Employer Jewel Food Stores, Inc.  
Address By 117 Madison  
Date 1941

Minimum rate	\$35.00 per week
251 to 275	37.50 per week
276 to 300	40.00 per week
301 to 350	42.50 per week
351 to 400	45.00 per week
401 and over	47.50 per week

These rates to apply over a four week period.

[fol. 114]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
DEFENDANTS' EXHIBIT 40B



# AMALGAMATED MEAT CUTTERS AND B. W. OF N. A.

Affiliated with

R. EMMETT KELLY  
Sec.-Treas. Local 546

120 N. WELLS ST.  
Room 1615

American Federation of Labor  
Illinois Federation of Labor  
Chicago Federation of Labor

LOCAL 546

Regular Meetings the 1st, 3rd, 5th, 7th, 9th, 11th, 13th, 15th, 17th, 19th, 21st, 23rd, 25th, 27th, 29th, 31st of each month at Meat Cutters Hall, 120 N. Wells St.

CHICAGO

MAY 28 1963

## Articles of Agreement governing Meat Markets in the City of Chicago and County of Cook, entered

into between hereinafter called the "employer," all Meat Markets and Chain Store Meat Markets, all combination grocery and meat Markets in Chicago and County of Cook; and the AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 546, and AFFILIATED LOCALS, (A. F. of L.), hereinafter called the "Union."

This contract approved and passed by the International Executive Board at the General Office the 4th day of October, 1941.

ARTICLE I. FOR AND IN CONSIDERATION of the mutual promises of the parties hereto and for other good and valuable considerations, receipt of which are hereby acknowledged, this Agreement is entered into.

ARTICLE II. The employer recognizes and agrees that said Union is and shall be the sole and exclusive collective bargaining agency for and on behalf of all meat cutters and butcher workmen employed by said Employer on their premises.

### WORKING HOURS

ARTICLE III. Eight and one-half (8½) hours shall constitute the basic work day. Work to begin at 8:30 A. M. and stop at 6:00 P. M., allowing one (1) hour for lunch. Employees must be dressed and ready for work at 8:30 A. M.

ARTICLE IV. There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Armistice Day, Thanksgiving Day, Christmas Day and New Year's Day.

### MANAGER'S AND JOURNEYMAN'S CLAUSE

ARTICLE V. (a) The term "Manager" shall be construed to mean a journeyman meat cutter, who is responsible for the efficient management of the market and shall receive not less than Fifty Dollars (\$50.00) weekly.

(b) All Journeymen meat cutters shall receive not less than Forty-five Dollars (\$45.00) weekly as a minimum wage. Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages, or working conditions.

(c) Extra men to receive not less than Eight Dollars (\$8.00) per day, (except that on Saturday and the day preceding holidays, they shall receive Nine Dollars (\$9.00)), unless they work the full week, when they are to receive the regular salary of the permanent meat cutters whose places they are filling.

(d) The meat cutters employed in low volume shops must receive the journeyman scale of wages provided for in this agreement. It is distinctly understood that there shall be no concessions for the said low volume shops.

ARTICLE VI. Any employee who has given service for the course of one year shall be entitled to one week's vacation with pay. After three years service he shall be entitled to two weeks vacation with pay. In case of dispute, the matter shall be referred to arbitration, as provided for in Article XVIII.

ARTICLE VII. (a) It is expressly understood that no customer shall be served who comes into the market before 8:30 A. M. or after 6:00 P. M.; that all customers in the market at the closing hour shall be served; that all meats will be properly taken care of and the market placed in a sanitary condition. Such work not to exceed fifteen minutes and not to be construed as overtime. Overtime may be worked on the second day before Thanksgiving Day, Christmas Day and New Year's Day, when employees may work such overtime as may be required at the rate of Time and One-half per hour. Such work to be performed behind locked doors.

(b) Employees shall not take inventory outside of regular working hours.

### APPRENTICE CLAUSE

ARTICLE VIII. (a) In markets where three (3) or more journeymen are employed one (1) apprentice is permitted and an additional apprentice for every three (3) meat cutters.

Scale of apprentices to be as follows:

First year	\$22.50
Second year	27.50
Third year	32.50

(b) After completing two (2) years of apprenticeship they shall be classified as improver apprentices, and after serving three (3) years of apprenticeship they shall be classified as journeymen meat cutters and shall receive the prevailing scale of wages.

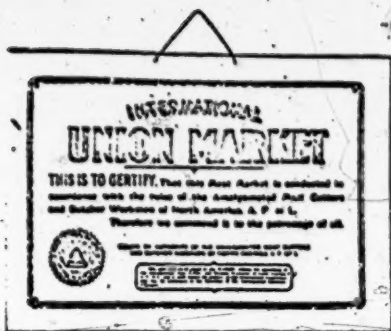
(c) Apprentices shall not work part time or as extra men on Saturdays, or the day preceding holidays. Apprentices must be at least sixteen (16) years of age.

ARTICLE IX. (a) When in need of help, employers must give preference to members in good standing of Local 546.

(b) The employer agrees to employ and keep in employment only such persons who are members in good standing of the said Union. All new employees employed by the employer shall, after the effective date of this agreement, within thirty (30) days, become members of the Union, and shall be required to remain members in good standing as a condition of the continuation of their employment. The employer agrees that, upon written notice from the Union, they will discharge, at the Union's request, any person, within a period of fifteen (15) days, who shall not be in good standing.

(c) Business representatives have full authority and approval from both parties to this agreement to immediately remove and require the discharge of any men working beneath the scale fixed herein.

(d) No employee shall be discharged without good and sufficient cause; drunkenness, dishonesty, incompetency, or any other cause will be sufficient cause for dismissal, or help can be dismissed providing preference



# AMALGAMATED MEAT CUTTERS

AND B. W. OF N. A.

58 C1415

R. EMMETT KELLY  
Sec.-Treas. Local 546

128 N. WELLS ST.  
Room 1613

Franklin 9839

Affiliated with  
American Federation of Labor  
Illinois Federation of Labor  
Chicago Federation of Labor

Def. no. 400

MAY 28 1963

Regular Meetings the 2nd Tuesday Night of each month at Meat Cutters Hall, 128 N. Wells St.

AT O'Clock 43  
ELBERT A. WAGNER, JR.  
CLERK

LOCAL 546

Regular Meetings the 2nd Tuesday Night of each month at Meat Cutters Hall, 128 N. Wells St.

## Articles of Agreement governing Meat Markets in the City of Chicago and County of Cook, entered

into between

hereinafter called the "employer", all Meat Markets and Chain Store Meat Markets, all combination Grocery and Meat Markets in Chicago and County of Cook; and the AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 546, and AFFILIATED LOCALS, (A. F. of L.), hereinafter called the "Union".

This contract approved and passed by the International Executive Board at the General Office the \_\_\_\_\_ day of October, 1942.

ARTICLE I. FOR AND IN CONSIDERATION of the mutual promises of the parties hereto and for other good and valuable considerations, receipt of which are hereby acknowledged, this Agreement is entered into.

ARTICLE II. The employer recognizes and agrees that said Union is and shall be the sole and exclusive collective bargaining agency for, and on behalf of all meat cutters and butcher workmen employed by said Employer on their premises.

### WORKING HOURS

ARTICLE III. Eight and one-half (8½) hours shall constitute the basic work day. Work to begin at 8:30 A. M. and stop at 6:00 P. M., allowing one (1) hour for lunch. Employees must be dressed and ready for work at 8:30 A. M.

ARTICLE IV. There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day.

### MANAGER'S AND JOURNEYMAN'S CLAUSE

ARTICLE V. (a) The term "manager" shall be construed to mean a journeyman meat cutter, who is responsible for the efficient management of the market and shall receive not less than Fifty-three and 50/100 Dollars (\$53.50) weekly.

(b) All journeymen meat cutters shall receive not less than Forty-eight Dollars (\$48.00) weekly as a minimum wage. Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages, or working conditions.

(c) Extra men to receive not less than Eight Dollars (\$8.00) per day, except that on Saturday and the day preceding holidays, they shall receive Nine Dollars (\$9.00), unless they work the full week, when they are to receive the regular salary of the permanent meat cutters whose places they are filling. All extra and part time employees may be employed only if they can show a permit from the Union office; provided, however, that the employer may, in case of emergency, employ an extra man if either the employer or the extra man will call into the Union office and report the employment conditions.

(d) The meat cutters employed in low volume shops must receive the journeyman scale of wages provided for in this agreement. It is distinctly understood that there shall be no concessions for the said low volume shops.

ARTICLE VI. Any employee who has given service for the course of one year shall be entitled to one week's vacation with pay. After three years service he shall be entitled to two weeks' vacation with pay. A man relieving a manager on vacation shall receive the contract rate of pay for managers. In case of dispute, the matter shall be referred to arbitration, as provided for in Article XVIII.

ARTICLE VII. (a) It is expressly understood that no customer shall be served who comes into the market before 8:30 A. M. or after 6:00 P. M.; that all customers in the market at the closing hour shall be served; that all meats will be properly taken care of and the market placed in a sanitary condition. Such work not to exceed fifteen minutes and not to be construed as overtime. Overtime may be worked on the second day before Thanksgiving Day, Christmas Day and New Year's Day, when employees may work such overtime as may be required at the rate of time and one-half per hour. Such work to be performed behind locked doors.

(b) Employees shall not take inventory outside of regular working hours.

### APPRENTICE CLAUSE

ARTICLE VIII. (a) In markets where three (3) or more journeymen are employed one (1) apprentice is permitted and an additional apprentice for every three (3) meat cutters.

Scale of apprentices to be as follows:

First year.....	\$25.00
Second year.....	30.00
Third year.....	35.00

(b) After completing two (2) years of apprenticeship they shall be classified as improver apprentices, and after serving three (3) years of apprenticeship they shall be classified as journeymen meat cutters and shall receive the prevailing scale of wages.

(c) Apprentices shall not work part time or as extra men on Saturdays, or the day preceding holidays. Apprentices must be at least sixteen (16) years of age.

ARTICLE IX. (a) When in need of help, employers must give preference to members in good standing of Local 546.

(b) The employer agrees to employ and keep in employment only such persons who are members in good standing of said Union. All new employees employed by the employer shall, after the effective date of this agreement, within thirty (30) days, become members of the Union, and shall be required to remain members in good standing as a condition of the continuation of their employment. The employer agrees that, upon written notice from the Union, they will discharge at the Union's request, any person, within a period of fifteen (15) days, who shall not be in good standing.

(c) Business representatives have full authority and approval from both parties to this agreement to immediately remove and require the discharge of any men working beneath the scale fixed herein.

(d) No employee shall be discharged without good and sufficient cause; drunkenness, dishonesty, incompetency, inefficiency or an over supply of help will be sufficient cause for dismissal, or help can be dismissed providing preference be



ARTICLE VI. Any employee who has given service for the course of one year shall be entitled to one week's vacation with pay. After three years service he shall be entitled to two weeks' vacation with pay. A man relieving a manager on vacation shall receive the contract rate of pay for managers. In case of dispute, the matter shall be referred to arbitration, as provided for in Article XVIII.

ARTICLE VII. (a) It is expressly understood that no customer shall be served who comes into the market before 8:30 A. M. or after 6:00 P. M.; that all customers in the market at the closing hour shall be served; that all meats will be properly taken care of and the market placed in a sanitary condition. Such work not to exceed fifteen minutes and not to be construed as overtime. Overtime may be worked on the second day before Thanksgiving Day, Christmas Day and New Year's Day, when employees may work such overtime as may be required at the rate of time and one-half per hour. Such work to be performed behind locked doors.

(b) Employees shall not take inventory outside of regular working hours.

#### APPRENTICE CLAUSE

ARTICLE VIII. (a) In markets where three (3) or more journeymen are employed one (1) apprentice is permitted and an additional apprentice for every three (3) meat cutters.

Scale of apprentices to be as follows:

First year.....	\$25.00
Second year.....	30.00
Third year.....	35.00

(b) After completing two (2) years of apprenticeship they shall be classified as Improver apprentices, and after serving three (3) years of apprenticeship they shall be classified as journeymen meat cutters and shall receive the prevailing scale of wages.

(c) Apprentices shall not work part time or as extra men on Saturdays, or the day preceding holidays. Apprentices must be at least sixteen (16) years of age.

ARTICLE IX. (a) When in need of help, employers must give preference to members in good standing of Local 546.

(b) The employer agrees to employ and keep in employment only such persons who are members in good standing of said Union. All new employees employed by the employer shall, after the effective date of this agreement, within thirty (30) days, become members of the Union, and shall be required to remain members in good standing as a condition of the continuation of their employment. The employer agrees that, upon written notice from the Union, they will discharge at the Union's request, any person, within a period of fifteen (15) days, who shall not be in good standing.

(c) Business representatives have full authority and approval from both parties to this agreement, to immediately remove and require the discharge of any men working beneath the scale fixed herein.

(d) No employee shall be discharged without good and sufficient cause; drunkenness, dishonesty, incompetency, inactivity or an over supply of help will be sufficient cause for dismissal, or help can be dismissed providing preference be given to Union men in replacing help.

ARTICLE X. It will be the duty of the employer to prominently display Union shop cards in all establishments wherein union meat cutters are employed. These shop cards shall remain the property of the Union, and the employer shall have their usage only until such time as the Union shall request their return.

ARTICLE XI. This agreement remains in full force and effect until September 30th, 1943. Any alteration that may be desired by either party to this agreement at the time of expiration must be made in writing not later than forty-five (45) days prior to its expiration. In case neither party serves notice for a change in this agreement, at its expiration, it shall automatically renew itself to September 30, 1944.

ARTICLE XII. If through any cause whatever the adoption of this agreement be delayed later than October 31st, 1942, it shall become retroactive to October 1st, 1942.

ARTICLE XIII. This agreement to be kept posted in the place of employment so that every employee may have equal and easy access to same.

ARTICLE XIV. Laundry, tools and sharpening of tools to be furnished free of cost by employers.

ARTICLE XV. The self service system of meat merchandising will be considered a violation of this agreement.

ARTICLE XVI. \_\_\_\_\_ agree not to negotiate with any but the duly elected officers of Local 546 and further agree not to make a contract with anyone not affiliated with Local 546 and affiliated Locals.

ARTICLE XVII. Any member of Local 546 who is in good standing and is in business for himself who may desire to affiliate with the \_\_\_\_\_ may apply for a withdrawal card, provided the request be accompanied by similar request from the \_\_\_\_\_. Withdrawal card may be obtained upon application to the Executive Board of Local 546.

ARTICLE XVIII. ARBITRATION CLAUSE. All grievances which cannot be adjusted by Local 546 and employers shall be referred to an arbitration board consisting of two (2) members to be named by employees, two (2) by the affected employers and one (1) to be agreed upon by the four already selected. No strike, cessation of work, picketing, boycott or lockout to occur when arbitration has been requested by either party; provided that the dispute has been heard and decided within a thirty (30) day period from submission.

ARTICLE XIX. Local 546 will furnish men who will work to the best interest of the employers in every way, just and lawful, who will give honest and diligent service to patrons of the employer's establishment, who will do everything within their power for the uplifting of the meat industry.

ARTICLE XX. If, due to the present war emergency, the Government institutes a meatless day program, either party may demand a renegotiation of the provisions thereof specifically governing wages and hours.

The parties hereto certify that they are empowered and duly authorized in their own name.

SIGNED FOR LOCAL 546 and AFFILIATED LOCALS  
AMALGAMATED MEAT CUTTERS AND BUTCHER  
WORKMEN OF NORTH AMERICA, A. F. of L.

President: \_\_\_\_\_

Sec. Treas.: \_\_\_\_\_

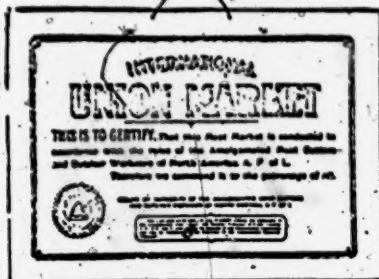
EMPLOYER:

Address: \_\_\_\_\_

[fol. 116]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANTS' EXHIBIT 40D



# AMALGAMATED MEAT CUTTERS AND B. W. OF N. A. 5821415

R. EMMETT KELLY  
Sec.-Treas. Local 546  
128 N. WELLS ST.  
Room 1602  
Franklin 0030

Affiliated with  
American Federation of Labor  
Illinois Federation of Labor  
Chicago Federation of Labor

LOCAL 546

Regular Meetings the 2nd and 4th Mondays of each month at Meat Cutters Hall, 128 N. Wells St.

MAY 28 1963

## Articles of Agreement governing Meat Markets in the City of Chicago and County of Cook, entered into between

hereinafter called the "employer", all Meat Markets and Chain Store Meat Markets, all combination Grocery and Meat Markets in Chicago and County of Cook; and the AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 546 (A. F. of L.), hereinafter called the "Union".

This contract approved and passed by the International Executive Board at the General Office the day

of

ARTICLE I. FOR AND IN CONSIDERATION of the mutual promises of the parties hereto and for other good and valuable considerations, receipt of which are hereby acknowledged, this Agreement is entered into.

ARTICLE II. (a) The employer recognizes and agrees that said Union is and shall be the sole and exclusive collective bargaining agency for and on behalf of all meat cutters and butcher workmen employed by said Employer on their premises.

(b) All former members of Local 546 returning from defense plants must report to the Union and secure the necessary credentials before employer may employ them.

### WORKING HOURS

ARTICLE III. Eight and one-half (8½) hours shall constitute the basic work day. Work to begin at 8:30 A. M. and stop at 6:00 P. M., allowing one (1) hour for lunch, said hour to begin no earlier than 11:00 A. M., nor end no later than 2:00 P. M. This to apply to all markets whether manned by one or more than one employee. Employees must be dressed and ready for work at 8:30 A. M.

ARTICLE IV. There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day.

### MANAGER'S AND JOURNEYMAN'S CLAUSE

ARTICLE V. (a) The term "manager" shall be construed to mean a journeyman meat cutter, who is responsible for the efficient management of the market and shall receive not less than Fifty-four Dollars (\$54.00) weekly.

(b) All journeymen meat cutters shall receive not less than Forty-eight and 50/100 Dollars (\$48.50) weekly as a minimum wage. Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages, or working conditions.

(c) Extra men to receive not less than Eight Dollars (\$8.00) per day, except that on Saturday and the day preceding holidays, they shall receive Nine Dollars (\$9.00), unless they work the full week, when they are to receive the regular salary of the permanent meat cutters whose places they are filling. All extra and part time employees may be employed only if they can show a permit from the Union office; provided, however, that the employer may, in case of emergency, employ an extra man if either the employer or the extra man will call into the Union office and report the employment conditions.

(d) The meat cutters employed in low volume shops must receive the journeyman scale of wages provided for in this agreement. It is distinctly understood that there shall be no concessions for the said low volume shops.

ARTICLE VI. Any employee who has given service for the course of one year shall be entitled to one week's vacation with pay. After three years service he shall be entitled to two weeks' vacation with pay. A man relieving a manager on vacation shall receive the contract rate of pay for managers. In case of dispute, the matter shall be referred to arbitration, as provided for in Article XVIII.

ARTICLE VII. (a) It is expressly understood that no customer shall be served who comes into the market before 8:30 A. M. or after 8:00 P. M.; that all customers in the market at the closing hour shall be served; that all meats will be properly taken care of and the market placed in a sanitary condition. Such work not to exceed fifteen minutes and not to be construed as overtime. Overtime may be worked as provided for in the Female Supplementary Agreement. Such work performed to be paid for at the overtime rate of time and one-half per hour, and to be performed behind locked doors.

(b) Employees shall not take inventory outside of regular working hours.

### APPRENTICE CLAUSE

ARTICLE VIII. (a) In markets where three (3) or more journeymen are employed one (1) apprentice is permitted and an additional apprentice for every three (3) meat cutters.

Scale of apprentices to be as follows:

First year.....	\$23.50
Second year.....	\$30.50
Third year.....	\$35.50

(b) After serving three (3) years of apprenticeship they shall be classified as journeymen meat cutters and shall receive the prevailing scale of wages.

(c) Apprentices shall not work part time or as extra men on Saturdays, or the day preceding holidays. Apprentices must be at least sixteen (16) years of age.

ARTICLE IX. (a) When in need of help, employers must give preference to members in good standing of Local 546.

(b) The employer agrees to employ and keep in employment only such persons who are members in good standing of said Union. All new employees employed by the employer shall, after the effective date of this agreement, within thirty (30) days, become members of the Union, and shall be required to remain members in good standing as a condition of the continuation of their employment. The employer agrees that, upon written notice from the Union, they will discharge at the Union's



holidays, they shall receive the same salary of the permanent meat cutters whose places they are filling. All extra and part time employees may be employed only if they can show a permit from the Union office; provided, however, that the employer may, in case of emergency, employ an extra man if either the employer or the extra man will call into the Union office and report the employment conditions.

(d) The meat cutters employed in low volume shops must receive the journeyman scale of wages provided for in this agreement. It is distinctly understood that there shall be no concessions for the said low volume shops.

ARTICLE VI. Any employee who has given service for the course of one year shall be entitled to one week's vacation with pay. After three years service he shall be entitled to two weeks' vacation with pay. A man relieving a manager on vacation shall receive the contract rate of pay for managers. In case of dispute, the matter shall be referred to arbitration, as provided for in Article XVIII.

ARTICLE VII. (a) It is expressly understood that no customer shall be served who comes into the market before 8:30 A. M. or after 6:00 P. M. that all customers in the market at the closing hour shall be served; that all meats will be properly taken care of and the market closed in a sanitary condition. Such work as to assist in closing markets and not to be construed as overtime. Overtime may be worked as provided for in the Female Supplementary Agreement. Such work performed to be paid for at the overtime rate of time and one-half per hour, and to be performed behind locked doors.

(b) Employees shall not take inventory outside of regular working hours.

#### APPRENTICE CLAUSE

ARTICLE VIII. (a) In markets where three (3) or more journeymen are employed one (1) apprentice is permitted and an additional apprentice for every three (3) meat cutters. Scale of apprentices to be as follows:

First year.....	\$25.50
Second year.....	30.50
Third year.....	35.50

(b) After serving three (3) years of apprenticeship they shall be classified as journeymen meat cutters and shall receive the prevailing scale of wages.

(c) Apprentices shall not work part time or as extra men on Saturdays, or the day preceding holidays. Apprentices must be at least sixteen (16) years of age.

ARTICLE IX. (a) When in need of help, employers must give preference to members in good standing of Local 546. (b) The employer agrees to employ and keep in employment only such persons who are members in good standing of said Union. All new employees employed by the employer shall, after the effective date of this agreement, within thirty (30) days, become members of the Union, and shall be required to remain members in good standing as a condition of the continuation of their employment. The employer agrees that, upon written notice from the Union, they will discharge at the Union's request, any person, within a period of fifteen (15) days, who shall not be in good standing.

(c) Business representatives have full authority and approval from both parties to this agreement to immediately remove and require the discharge of any men working beneath the scale fixed herein.

(d) No employee shall be discharged without good and sufficient cause; drunkenness, dishonesty, incompetency, incivility or an over supply of help will be sufficient cause for dismissal, or help can be dismissed providing preference be given to Union men in replacing help.

ARTICLE X. It will be the duty of the employer to prominently display Union shop cards in all establishments wherein union meat cutters are employed. These shop cards shall remain the property of the Union, and the employer shall have their usage only until such time as the Union shall request their return.

ARTICLE XI. (a) This agreement remains in full force and effect until September 30th, 1944. Any alteration that may be desired by either party to this agreement at the time of expiration must be made in writing not later than forty-five (45) days prior to its expiration. In case neither party serves notice for a change in this agreement, at its expiration, it shall automatically renew itself to September 30, 1945, except as is provided in "B" of this ARTICLE.

(b) The Union shall have the right to request a change in the clause regarding wages only during the life of the agreement, terminating September 30th, 1944, on two weeks' notice, in the event of a change in the wage policy of the National War Labor Board as formulated by it in the so-called Little Steel Formula, or in event of a change in Executive Order No. 9250, or Executive Order No. 9328, or by the May 13th 1943 Directive of the Director of Economic Stabilization.

ARTICLE XII. If through any cause whatever the adoption of this agreement be delayed later than October 31st, 1943, it shall become retroactive to October 1st, 1943.

ARTICLE XIII. This agreement to be kept posted in the place of employment so that every employee may have equal and easy access to same.

ARTICLE XIV. Laundry, tools and sharpening of tools to be furnished free of cost by employers.

ARTICLE XV. The self service system of meat merchandising will be considered a violation of this agreement.

ARTICLE XVI. \_\_\_\_\_ agree not to negotiate with any but the duly elected officers of Local 546 and further agree not to make a contract with anyone not affiliated with Local 546.

ARTICLE XVII. Any member of Local 546 who is in good standing and is in business for himself who may desire to affiliate with the \_\_\_\_\_ may apply for a withdrawal card, provided the request be

accompanied by similar request from the \_\_\_\_\_ Withdrawal card may be obtained upon application to the Executive Board of Local 546.

ARTICLE XVIII. ARBITRATION CLAUSE. All grievances which cannot be adjusted by Local 546 and employers shall be referred to an arbitration board consisting of two (2) members to be named by employees, two (2) by the affected employers and one (1) to be agreed upon by the four already selected. No strike, cessation of work, picketing, boycott or lockout to occur when arbitration has been requested by either party, provided that the dispute has been heard and decided within a thirty (30) day period from submission.

ARTICLE XIX. Local 546 will furnish men who will work to the best interest of the employers in every way, just and lawful, who will give honest and diligent service to patrons of the employer's establishment, who will do everything

ARTICLE XX. If, due to the present war emergency, the Government institutes a meatless day program, either party may demand a renegotiation of the provisions thereof specifically governing wages and hours.

The parties hereto certify that they are empowered and duly authorized to sign this agreement.

EMPLOYER:

SIGNED FOR LOCAL 546,  
AMALGAMATED MEAT CUTTERS AND BUTCHER  
WORKMEN OF NORTH AMERICA, A. F. of L.

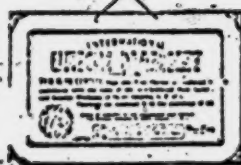
Address: \_\_\_\_\_

President: \_\_\_\_\_

[fol. 117]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANTS' EXHIBIT 40E



# AMALGAMATED MEAT CUTTERS AND B. W OF N. A.

Affiliated with  
American Federation of Labor  
Illinois Federation of Labor  
Chicago Federation of Labor

R. EMMETT KELLY  
Sec. - Treas. Local 546  
128 N. WELLS ST.  
Room 1602  
Franklin 0030

1945-46

LOCAL 546

Regular Meetings the 2nd Tuesday Night of each month at Meat Cutters Hall, 128 N. Wells St.

FILED

MAY 28 1963

O'CLOCK  
ELBERT A. WAGNER, JR.  
CLERK

Articles of Agreement Governing Meat Markets in the City of Chicago and County of Cook, entered into between..... hereinafter called the "employer", all Meat Markets and Chain Store Meat Markets, all combination Grocery and Meat Markets in Chicago and County of Cook; and the AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 546 (A. F. of L.), hereinafter called the "Union".

This Contract approved and passed by the International Executive Board at the General Office.....day of....., 19....

## ARTICLE I

FOR AND IN CONSIDERATION of the mutual promises of the parties hereto and for other good and valuable considerations, receipt of which is hereby acknowledged, this Agreement is entered into.

## ARTICLE II

The employer recognizes and agrees that said Union is and shall be the sole and exclusive collective bargaining agency for and on behalf of all meat cutters and butcher workmen employed by said Employer on their premises, including those workers processing, packing, wrapping and selling frozen fresh meats.

## ARTICLE III

### WORKING HOURS

(a) Eight and one-half (8 1/2) hours shall constitute the basic work day, MONDAY THROUGH FRIDAY; work to begin at 8:30 A. M. and stop at 6:00 P. M. allowing one (1) hour for lunch, said hour to begin no earlier than 11:00 A. M., nor end no later than 2:00 P. M. Six hours (6) shall constitute the basic work day on SATURDAY; work to begin at 8:30 A. M. and stop at 3:00 P. M. allowing one-half (1/2) hour for lunch. This to apply to all markets whether manned by one or more than one employee. Employees must be dressed and ready for work at 8:30 A. M.

(b) It is agreed that should any of the Holidays set forth in ARTICLE IV fall on Monday or Friday the employer may remain open until 6:00 P. M. on the Saturday preceding or following this Holiday, the hours after 3:00 P. M. being paid for at the overtime rate.

## ARTICLE IV

There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day. When and if Victory Day is declared a National Legal Holiday it shall be made a part of this ARTICLE.

## ARTICLE V

### MANAGER'S AND JOURNEYMAN'S CLAUSE

(a) The term "journeyman" shall be construed to mean a journeyman.

[fol. 118]

IN THE  
FOR THE N

DE

GCT 1945

LOCAL 546 (A. F. of L.), hereinafter called the "Union".

This Contract approved and passed by the International Executive Board at the General Office.....day of....., 19....

ELBERT A. WAGNER, JR.  
CLERK

#### ARTICLE I

FOR AND IN CONSIDERATION of the mutual promises of the parties hereto and for other good and valuable considerations, receipt of which is hereby acknowledged, this Agreement is entered into.

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#### ARTICLE V

##### MANAGER'S AND JOURNEYMAN'S CLAUSE

(a) The term "manager" shall be construed to mean a journeyman meat cutter, who is responsible for the efficient management of the market and shall receive not less than Fifty-seven Dollars and Fifty Cents (\$57.50) weekly.

(b) All journeymen meat cutters shall receive not less than Fifty-two Dollars (\$52.00) weekly as a minimum wage. Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages, or working conditions.

(c) Extra men to receive not less than Ten Dollars (\$10.00) per day, except that on Saturday they shall receive Eight Dollars (\$8.00), unless they work the full week, when they are to receive the regular salary of the permanent meat cutters whose places they are filling. All extra and part time employees may be employed only if they show a permit from the Union office; provided, however, that the employer may, in case of emergency, employ an extra man if either the employer or the extra man will call into the Union office and report the employment conditions.

(d) The meat cutters employed in low volume shops must receive the journeyman scale of wages provided for in this Agreement. It is distinctly understood that there shall be no concessions for the said low volume shops.

DO NOT WRITE IN THESE SPACES

[fol. 118]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANTS' EXHIBIT 40F



## ARTICLE VI

Any employee who has given service for the course of one year shall be entitled to one week's vacation with pay. After three years of service he shall be entitled to two weeks' vacation with pay. A man relieving a manager on vacation shall receive the Contract rate of pay for managers. In case of dispute, the matter shall be referred to arbitration, as provided for in ARTICLE XVIII.

## ARTICLE VII

(a) It is expressly understood that no customer shall be served who comes into the market before or after the hours set forth in ARTICLE III, that all customers in the market at the closing hour shall be served; that all meats will be properly taken care of and the market placed in a sanitary condition. Such work not to exceed fifteen minutes and not to be construed as overtime.

Overtime may be worked at the following rates:

Managers .....	\$1.80 per hour
Journeyman .....	1.60 per hour

### APPRENTICES

First Year .....	\$ .90 per hour
Second Year .....	1.05 per hour
Third Year .....	1.20 per hour

(c) Employees shall not take inventory outside of regular working hours.

## ARTICLE VIII

### APPRENTICE CLAUSE

(a) In markets where three (3) or more journeymen are employed one (1) apprentice is permitted and an additional apprentice for every three (3) meat cutters.

Scale of apprentices to be as follows:

First Year .....	\$30.00
Second Year .....	35.00
Third Year .....	40.00

(b) After serving three (3) years of apprenticeship they shall be classified as journeymen meat cutters and shall receive the prevailing scale of wages.

(c) Apprentices shall not work part time or as extra men on Saturdays, or the day preceding holidays. Apprentices must be at least sixteen (16) years of age.

## ARTICLE IX

(a) When in need of help, employers must give preference to members in good standing of Local 546.

(b) The employer agrees to employ and keep in employment only such persons who are members in good standing of said Union. All new employees employed by the employer shall, after the effective date of this agreement, within thirty (30) days, become members of the Union, and shall be required to remain members in good standing as a condition of the continuation of their employment. The employer agrees that, upon written notice from the Union, they will discharge at the Union's request, any person, within a period of fifteen (15) days, who shall not be in good standing.

(c) Business Representatives have full authority and approval from both parties to this agreement to immediately remove and require the discharge of any men working beneath the scale fixed herein.

(d) No employee shall be discharged without good and sufficient cause; drunkenness, dishonesty, incompetency, incivility or an over supply of help will be sufficient cause for dismissal, or help can be dismissed providing preference be given to Union men in replacing help.

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### ARTICLE X

It will be the duty of the employer to prominently display Union shop cards in all establishments wherein Union meat cutters are employed. These shop cards shall remain the property of the Union, and the employer shall have their usage only until such time as the Union shall request their return.

### ARTICLE XI

This agreement remains in full force and effect until September 30th, 1946. Any alteration that may be desired by either party to this agreement at the time of expiration must be made in writing not later than forty-five (45) days prior to its expiration. In case neither party serves notice for a change in this agreement, at its expiration, it shall automatically renew itself to September 30th, 1947.

## ARTICLE XII

If through any cause whatever the adoption of this agreement be delayed later than October 31st, 1945, it shall become retroactive to October 1st, 1945.

## ARTICLE XIII

This agreement to be kept posted in the place of employment so that every employee may have equal and easy access to same.

## ARTICLE XIV

Laundry, tools and sharpening of tools to be furnished free of cost by employers.

## ARTICLE XV

The self service system of meat merchandising will be considered a violation of this agreement.

## ARTICLE XVI

..... agree not to negotiate with any but the duly elected officers of Local 546 and further agree not to make a contract with anyone not affiliated with Local 546.

## ARTICLE XVII

Any member of Local 546 who is in good standing and is in business for himself who may desire to affiliate with the ..... may apply for a withdrawal card, provided the request be accompanied by a similar request from the ..... Withdrawal card may be obtained upon application to the Executive Board of Local 546.

## ARTICLE XVIII

### ARBITRATION CLAUSE

All grievances which cannot be adjusted by Local 546 and employers shall be referred to an arbitration board consisting of two (2) members to be named by employees, two (2) by the affected employers and one (1) to be agreed upon by the four already selected. No strike, cessation of work, picketing, boycott or lock-out to occur when arbitration has been requested by either party, provided that the dispute has been heard and decided within a thirty (30) day period from submission.

## ARTICLE XIX

Local 546 will furnish men who will work to the best interest of the employers in every way, just and lawful, who will give honest and diligent service to patrons of the employer's establishment, who will do everything within their power for the uplifting of the meat industry.

## ARTICLE XX

It is agreed during the life of this agreement that there shall be no change in working hours by an employer without first obtaining approval of the Union.

## ARTICLE XXI

Any regular employee unable to work because of injuries received during the regularly scheduled work-week and whose injuries arose out of and during the course of his employment, shall be entitled to a full day's pay for each day lost because of such injuries, but not exceeding four (4) days in any such work week; provided, however, that the employee shall report upon receipt of the injury to the Company's physician whose decision with respect to the length of time required off shall be controlling; provided further, that nothing in this provision shall affect any rights accrued to either party under the First World War Compensation Act and that the employer shall

#### ARTICLE XVI

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The parties hereto certify that they are empowered and duly authorized to sign this agreement.

EMPLOYER:

SIGNED FOR LOCAL 546  
AMALGAMATED MEAT CUTTERS  
AND BUTCHER WORKMEN OF  
NORTH AMERICA, A. F. of L.

Address.....

President: .....

Dated at Chicago, ....., 1945

Sec.-Treas.: .....

[fol. 120]





R. EMMETT KELLY  
Sec. Treas. Local 546  
130 N. Wells St. Chicago  
Room 1602  
Franklin 0030

1946  
**AMALGAMATED MEAT CUTTERS  
AND B. W OF N. A. 58C1415**

Affiliated with  
American Federation of Labor  
Illinois Federation of Labor  
Chicago Federation of Labor

**LOCAL 546**

Regular Meetings the 2nd Tuesday Night of each  
month at Meat Cutters Hall, 130 N. Wells St.

**FILED**

Articles of Agreement Governing Meat Markets in the City of  
Chicago and County of Cook, entered into between.....  
hereinafter called the "employer", all meat markets and chain store meat  
markets, all combination Grocery and Meat Markets in Chicago and  
County of Cook; and the AMALGAMATED MEAT CUTTERS AND  
BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 546 (A.F.  
Of L.), hereinafter called the "Union".

This Contract approved and passed by the International Executive  
Board at the General Office.....day of.....19.....

MAY 28 1933

O'CLOCK

ELBERT A. WAGNER, JR.  
CLERK

**ARTICLE I**

FOR AND IN CONSIDERATION of the mutual promises of the  
parties hereto and for other good and valuable considerations, receipt of  
which is hereby acknowledged; this Agreement is entered into.

**ARTICLE II**

The Employer recognizes and agrees that said Union is and shall  
be the sole and exclusive collective bargaining agency for and on behalf  
of all meat cutters and butcher workmen employed by said employer on  
their premises; including those workers processing, packing, wrapping  
and selling frozen fresh meats.

The parties agree that all fish, poultry, rabbits, meats and its kindred  
products, fresh or frozen, except

- sliced boiled, baked or barbecued ham;
- sliced packaged bacon;
- sliced packaged dried beef;
- sliced packaged Canadian bacon;
- all smoked sausage;
- canned and glassed meats of all kinds;
- all ready to eat prepared meats, poultry and fish;
- frozen packaged fish;
- and all meats not for human consumption,

will be sold under the jurisdiction of AMALGAMATED MEAT CUT-  
TERS' UNION Employees in the Meat Department, and will be cut,  
prepared and fabricated by members of the AMALGAMATED MEAT  
CUTTERS, and said cutting, preparing, fabricating and packaging of  
above products into retail cuts will be done on the premises or immediately  
adjacent thereto.

**ARTICLE III**

**WORKING HOURS**

(a) Eight (8) hours shall constitute the basic work day, MONDAY  
THROUGH FRIDAY; work to begin at 9:00 A. M. and stop at 6:00  
P. M. allowing one (1) hour for lunch, said hour to begin no earlier than  
12:00 P. M. Five (5) hours shall con-

[fol. 121]

IN UNITED STATES DISTRICT COU  
FOR THE NORTHERN DISTRICT OF IL

DEPENDANTS' EXHIBIT 406



**Articles of Agreement Governing Meat Markets in the City of Chicago and County of Cook, entered into between.....**  
hereinafter called the "employer", all meat markets and chain store meat markets, all combination Grocery and Meat Markets in Chicago and County of Cook; and the **AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 543 (A.F. Of L.)**, hereinafter called the "Union".

This Contract approved and passed by the International Executive Board at the General Office.....day of.....19.....

**FILED**

**MAY 28 1933**

**10 O'CLOCK**

**ELBERT A. WAGNER, JR.**

**CLERK**

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- sliced packaged bacon;
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- sliced packaged Canadian bacon;
- all smoked sausage;
- canned and glassed meats of all kinds;
- all ready to eat prepared meats, poultry and fish;
- frozen packaged fish;
- and all meats not for human consumption,

will be sold under the jurisdiction of **AMALGAMATED MEAT CUTTERS' UNION** Employees in the Meat Department, and will be cut, prepared and fabricated by members of the **AMALGAMATED MEAT CUTTERS**, and said cutting, preparing, fabricating and packaging of above products into retail cuts will be done on the premises or immediately adjacent thereto.

### **ARTICLE III**

#### **WORKING HOURS**

(a) Eight (8) hours shall constitute the basic work day, **MONDAY THROUGH FRIDAY**; work to begin at 9:00 A. M. and stop at 6:00 P. M. allowing one (1) hour for lunch, said hour to begin no earlier than 11:00 A. M., nor end later than 2:00 P. M. Five (5) hours shall constitute the basic work day on **SATURDAY**; work to begin at 8:00 A. M. and stop at 1:00 P. M. This to apply to all markets whether manned by one or more than one employee. Employees must be dressed and ready for work at 9:00 A. M., **MONDAY THROUGH FRIDAY** and 8:00 A. M. on **SATURDAY**.

(b) It is agreed that should any of the Holidays set forth in **ARTICLE IV** fall on Monday, Tuesday or Wednesday, the preceding

[fol. 121]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
DEFENDANTS' EXHIBIT 406

Saturday may be worked until 6:00 P. M. Whenever these holidays fall on Thursday or Friday the following Saturday may be worked until 6:00 P. M. Said hours if worked to be paid for at the straight time hourly rate.

#### ARTICLE IV

There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day. When and if Victory Day is declared a National Legal Holiday it shall be made a part of this ARTICLE.

#### ARTICLE V

##### MANAGER'S AND JOURNEYMAN'S CLAUSE

(a) The term "manager" shall be construed to mean a journeyman meat cutter, who is responsible for the efficient management of the market and shall receive not less than Sixty-seven Dollars and Fifty Cents (\$67.50) weekly.

(b) All Journeymen meat cutters shall receive not less than Sixty-two Dollars (\$62.00) weekly as a minimum wage. Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages, or working conditions.

(c) Extra men to receive not less than Twelve Dollars (\$12.00) per day, except on Saturday they shall receive Seven Dollars and Fifty Cents (\$7.50), unless they work the full week, when they are to receive the regular salary of the permanent meat cutters whose places they are filling. All extra and part time employees may be employed only if they show a permit from the Union office; provided, however, that the employer may, in case of emergency, employ an extra man if either the employer or the extra man will call into the Union office and report the employment conditions.

(d) The meat cutters employed in low volume shops must receive the Journeyman scale of wages provided for in this Agreement. It is distinctly understood that there shall be no concession for the said low volume shops.

#### ARTICLE VI

(a) Any employee who has given service for the course of one year shall be entitled to one week's vacation with pay. After two years of service he shall be entitled to two weeks' vacation with pay. A man relieving a manager on vacation shall receive the Contract rate of pay for managers. In case of dispute, the matter shall be referred to arbitration, as provided for in ARTICLE XVIII.

(b) Whenever a holiday as listed in ARTICLE IV falls within an employee's vacation period, the employee shall receive an extra day's pay or a subsequent day off, at the employers option.

#### ARTICLE VII

(a) It is expressly understood that no customer shall be served who comes into the market before or after the hours set forth in ARTICLE III, that all customers in the market at the closing hour shall be served; that all meats will be properly taken care of and the market placed in a sanitary condition. Such work not to exceed fifteen minutes and not to be construed as overtime.

Overtime may be worked at the following rates:

Managers .....	\$2.25 per hour
Journeymen .....	2.07 per hour

#### APPRENTICES

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Overtime may be worked at the following rates:

Managers .....	\$2.25 per hour
Journeymen .....	2.07 per hour

### APPRENTICES

First Year .....	\$1.22 per hour
Second Year .....	1.41 per hour
Third Year .....	1.62 per hour

(b) Employees shall not take inventory outside of regular working hours.

[fol. 122]

## ARTICLE VIII

### APPRENTICE CLAUSE

(a) In markets where three (3) or more journeymen are employed one (1) apprentice is permitted and an additional apprentice for every three (3) meat cutters.

Weekly wage scale of apprentices to be as follows:

First Year .....	\$36.50
Second Year .....	42.50
Third Year .....	48.50

(b) After serving three (3) years of apprenticeship they shall be classified as journeymen meat cutters and shall receive the journeyman rate of pay.

(c) Apprentices shall not work part time or as extra men on Saturdays, or the day preceding holidays. Apprentices must be at least sixteen (16) years of age.

## ARTICLE IX

(a) When in need of help, the employer must give preference to members in good standing of Local 546.

(b) The Employer agrees to employ and keep in employment only such persons who are members in good standing of said Union. All new employees employed by the employer shall, after the effective date of this agreement, within thirty (30) days, become members of the Union, and shall be required to remain members in good standing as a condition of the continuation of their employment. The employer agrees that, upon written notice from the Union, they will discharge at the Union's request, any person, within a period of fifteen (15) days, who shall not be in good standing.

(c) Business Representatives have full authority and approval from both parties to this Agreement to immediately remove and require the discharge of any men working below the scale fixed herein.

(d) No employee shall be discharged without good and sufficient cause; drunkenness, dishonesty, incompetency, incivility or an over supply of help will be sufficient cause for dismissal, or help can be dismissed providing preference be given to Union men in replacing help.

## ARTICLE X

It will be the duty of the employer to prominently display Union shop cards in all establishments wherein Union meat cutters are employed. These shop cards shall remain the property of the Union, and the employer shall have their usage only until such time as the Union shall request their return.

## ARTICLE XI

This agreement remains in full force and effect through October 1, 1947. Any alteration that may be desired by either party to this agreement at the time of expiration must be made in writing not later than forty-five (45) days prior to its expiration. In case neither party serves notice for a change in this agreement, at its expiration, it shall automatically renew itself through October 1st, 1948.

## ARTICLE XII

If the adoption of the new Agreement be delayed later than October 31, 1947 it shall be retroactive through October 2nd, 1947.

## ARTICLE XIII

... to be kept posted in the place of employment so



Second Year ..... 42.50  
Third Year ..... 48.50

(b) After serving three (3) years of apprenticeship they shall be classified as journeymen meat cutters and shall receive the journeyman rate of pay.

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Laundry, tools and sharpening of tools to be furnished free of cost by employer.

[fol. 123]



## ARTICLE XV

The self-service system of merchandising meat under the jurisdiction of the Union as set forth in ARTICLE II will be considered a violation of this Agreement.

## ARTICLE XVI

..... agree not to negotiate with any but the duly elected officers of Local 546 and further agree not to make a Contract with anyone not affiliated with Local 546.

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## ARTICLE XVIII

### ARBITRATION CLAUSE

All grievances which cannot be adjusted by Local 546 and employer shall be referred to an arbitration board consisting of two (2) members to be named by employees, two (2) by the affected employer and one (1) to be agreed upon by the four already selected.

No strike, cessation of work, picketing, boycott or lock-out to occur when arbitration has been requested by either party, provided that the dispute has been heard and decided within a thirty (30) day period from submission.

## ARTICLE XIX

Local 546 will furnish men who will work to the best interest of the employer in every way, just and lawful, who will give honest and diligent service to patrons of the employer's establishment, who will do everything within their power for the uplifting of the meat industry.

## ARTICLE XX

It is agreed during the life of this Agreement that there shall be no change in working hours by an employer without first obtaining approval of the Union.

## ARTICLE XXI

Any regular employee unable to work because of injuries received during the regularly scheduled work-week and whose injuries arose out of or during the course of his employment shall be entitled to a full day's pay for each day lost because of such injuries, but not exceeding four (4) days in any such work week; provided, however, that the employee shall report upon receipt of the injury to the employer's physician whose decision with respect to the length of time required off shall be controlling; provided further, that nothing in this provision shall affect any rights accrued to either party under the State Workmen's Compensation Act, and that the employer shall receive credit for any payment made under this provision should compensation be awarded by the State Commission.

The parties hereto certify that they are empowered and duly authorized to sign this Agreement.

EMPLOYER:

SIGNED FOR LOCAL 546  
AMALGAMATED MEAT CUT-

.....agree not to .....  
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EMPLOYER:

.....  
.....

Address.....

Dated at Chicago....., 1946

SIGNED FOR LOCAL 546  
AMALGAMATED MEAT CUT-  
TERS AND BUTCHER WORK-  
MEN OF NORTH AMERICA,  
A. F. of L.

President:.....

Sec'y-Treas.:.....

[fol. 124]

Contract From Oct. 6, 1947, Through Oct. 2, 1948



R. EMMETT KELLY  
Sec.-Treas. Local 546  
138 N. Wells St., Chicago  
Room 1602  
Franklin 0030

**AMALGAMATED MEAT CUTTERS  
AND B. W. OF N. A. 58C1415**

*Affiliated with*  
American Federation of Labor  
Illinois Federation of Labor  
Chicago Federation of Labor

**LOCAL 546**

Regular Meetings the 2nd Tuesday Night or each  
month at Meat Cutters Hall, 138 N. Wells St.

*Sy. in 40 H.*

**FILED**

Articles of Agreement Governing Meat Markets in the City of Chicago and County of Cook, entered into between..... hereinafter called the "employer", all meat markets and chain store meat markets, all combination Grocery and Meat Markets in Chicago and County of Cook; and the AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 546 (Of L.) acting as the Collective Bargaining Agent for its members. This Contract approved and passed by the International Executive Board at the General Office the nineteenth day of August, 1947.

**MAY 28 1963**

**O'CLOCK**

**ALBERT A. WAGNER, JR.**  
CLERK

**ARTICLE I**

FOR AND IN CONSIDERATION of the mutual promises of the parties hereto and for other good and valuable considerations, receipt of which is hereby acknowledged, this Agreement is entered into.

**ARTICLE II**

The Employer recognizes and agrees that said Union is and shall be the sole and exclusive collective bargaining agency for and on behalf of all meat cutters and butcher workmen employed by said employer on their premises; including those workers processing, packing, wrapping and selling frozen fresh meats.

The parties agree that all fish, poultry, rabbits, meats and its kindred products, fresh or frozen, except

- sliced boiled, baked or barbecued ham;
- sliced packaged bacon;
- sliced packaged dried beef;
- sliced packaged Canadian bacon;
- all smoked sausage;
- canned and glassed meats of all kinds;
- all ready to eat prepared meats, poultry and fish;
- frozen packaged fish;
- and all meats not for human consumption,

will be sold by members of the AMALGAMATED MEAT CUTTERS' UNION Employees in the Meat Department, and will be cut, prepared and fabricated by members of the AMALGAMATED MEAT CUTTERS, and said cutting, preparing, fabricating and packaging of above products into retail cuts will be done on the premises or immediately adjacent thereto.

**ARTICLE III**

**WORKING HOURS**

(a) Eight and one-half (8½) hours shall constitute the basic work day, Monday through Saturday; work to begin at 8:30 A.M. and stop at

[fol. 125]

IN UNITED STATES  
FOR THE NORTHERN I

DEFENDANTS I

ARTICLES OF AGREEMENT between.....  
Chicago and County of Cook, entered into between.....  
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### ARTICLE III.

#### WORKING HOURS

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6:00 P.M., allowing one (1) hour for lunch, said hour to begin no earlier  
than 11:00 A.M., nor end later than 2:00 P.M. This to apply to all  
markets whether manned by one or more than one employee. Employees  
must be dressed and ready for work at 8:30 A.M. Monday through  
Saturday.

(b) Five (5) days shall constitute the basic work week, to be worked  
Monday through Saturday, with one (1) full day off within each shop,  
for each employee at the employers discretion. The day off shall be rotated  
or in accordance with the mutual agreement of the employer and his  
employees.

(c) Market operating hours shall be 9:00 A.M. to 6:00 P.M., MON-  
DAY THROUGH SATURDAY, inclusive.

(d) Any member called to work on the sixth (6) day in any regular  
work week, whether he be Manager, Journeyman or Apprentice, shall be

[fol. 125]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
DEFENDANTS' EXHIBIT 40H



guaranteed Four Hours and Fifteen Minutes (4 hours and 15 minutes) work at the rate of Eight Dollars and Fifty Cents (\$8.50). If said member works a full day he shall be paid at the rate of Fifteen Dollars (\$15.00). Reporting time on the sixth (6th) day shall be at either 8:30 A.M. or 1:45 P.M.

#### ARTICLE IV

(a) There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day. When and if Victory Day is declared a National Legal Holiday it shall be made a part of this ARTICLE.

(b) During a holiday week the employee shall receive a full week's pay for four (4) days of work; if an employee works the fifth (5th) day he shall be paid at the following rates:

JOURNEYMEN AND MANAGERS.....	\$15.00
1st YEAR APPRENTICES.....	10.00
2nd YEAR APPRENTICES.....	11.00
3rd YEAR APPRENTICES.....	12.00

#### ARTICLE V

##### MANAGER'S AND JOURNEYMAN'S CLAUSE

(a) The term "manager" shall be construed to mean a journeyman meat cutter, who is responsible for the efficient management of the market and shall receive not less than Seventy-three Dollars and Fifty Cents (\$73.50) weekly.

(b) All Journeymen meat cutters shall receive not less than Sixty-seven Dollars (\$67.00) weekly as a minimum wage. Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages, or working conditions.

(c) Extra men to receive not less than Thirteen Dollars and Fifty Cents (\$13.50) per day, unless they work the full week, when they are to receive the regular salary of the permanent meat cutters whose places they are filling. All extra and part time employees may be employed only if they show a permit from the Union office; provided, however, that the employer may, in case of emergency, employ an extra man if either the employer or the extra man will call into the Union office and report the employment conditions.

(d) The meat cutters employed in low volume shops must receive the Journeyman scale of wages provided for in this Agreement. It is distinctly understood that there shall be no concession for the said low volume shops.

#### ARTICLE VI

(a) Any employee who has given service for the course of one year shall be entitled to one week's vacation with pay. After two years of service he shall be entitled to two weeks' vacation with pay. A man relieving a manager on vacation shall receive the Contract rate of pay for managers. In case of dispute, the matter shall be referred to arbitration, as provided for in ARTICLE XVIII.

(b) Whenever a holiday as listed in ARTICLE IV falls within an employee's vacation period, the employee shall receive an extra day's pay or a subsequent day off, at the employers option.

#### ARTICLE VII

(a) It is expressly understood that no customer shall be served who comes into the market before or after the hours set forth in ARTICLE III, that all customers in the market at the closing hour shall be served; that all meats will be properly taken care of and the market placed in a sanitary condition. Such work not to exceed fifteen minutes and not to be construed as overtime.

(b) The market shall be open eight and one-half (8 1/2) hours in any one day



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(b) Overtime after eight and one-half (8½) hours in any one day may be worked at the following rates:

MANAGERS .....	\$2.60 per hour
JOURNEYMEN .....	2.37 per hour

### APPRENTICES

FIRST YEAR .....	\$1.46 per hour
SECOND YEAR .....	1.68 per hour
THIRD YEAR .....	1.89 per hour

(c) Employees shall not take inventory outside of regular working hours.

[fol. 126]

## ARTICLE VIII

### APPRENTICE CLAUSE

(a) Employers are permitted to employ Apprentices not to exceed two (2) for each five (5) journeymen employed provided that a quarterly report should be furnished to the Local Union.

Weekly Wage Scale of Apprentices to be as follows:

FIRST YEAR ..... \$41.50  
SECOND YEAR ..... 47.50  
THIRD YEAR ..... 53.50

(b) After serving three (3) years of apprenticeship they shall be classified as journeymen meat cutters and shall receive the journeyman rate of pay.

(c) Apprentices shall not work part time or as extra men on Saturdays, or the day preceding holidays. Apprentices must be at least sixteen (16) years of age.

## ARTICLE IX

(a) When in need of help, the employer must give preference to members in good standing of Local 546.

(b) The Employer agrees to employ and keep in employment only such persons who are members in good standing of said Union. All new employees employed by the employer shall, after the effective date of this agreement, within thirty (30) days, become members of the Union, and shall be required to remain members in good standing as a condition of the continuation of their employment. The employer agrees that, upon written notice from the Union, they will discharge at the Union's request, any person, within a period of fifteen (15) days, who shall not be in good standing.

(c) Business Representatives have full authority and approval from both parties to this Agreement to immediately remove and require the discharge of any men working below the scale fixed herein.

(d) No employee shall be discharged without good and sufficient cause; drunkenness, dishonesty, incompetency, incivility or an over supply of help will be sufficient cause for dismissal, or help can be dismissed providing preference be given to Union men in replacing help.

## ARTICLE X

It will be the duty of the employer to prominently display Union shop cards in all establishments wherein Union meat cutters are employed. These shop cards shall remain the property of the Union, and the employer shall have their usage only until such time as the Union shall request their return. The employer agrees to surrender same immediately, upon demand by the Union.

## ARTICLE XI

(a) The terms of this Agreement shall commence at 11:50 P.M., August 21, 1947, and shall expire at 12:00 Midnight, October 2, 1948.

(b) The terms and provisions of the Contract between the Union and the Employer for the term ending October 1, 1947, except for ARTICLE XI thereof are hereby incorporated and made a part of this Agreement, and shall govern the rights and duties of the parties hereto for the period commencing at 11:50 P.M., August 21, 1947, and ending at 12:00 Midnight, October 5, 1947.

(c) At 12:00 Midnight, October 5, 1947, the terms and provisions as herein set forth shall become effective and remain in effect through October 2, 1948.

(d) Any alteration that may be desired by either party to this Agreement at the time of expiration must be made.

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(d) Any alteration that may be desired by either party to this Agreement at the time of expiration must be made in writing not later than sixty (60) days prior to its expiration. In case neither party serves notice for a change in this Agreement, at its expiration, it shall automatically renew itself through October 1, 1949.

#### ARTICLE XII

If the adoption of the new Agreement be delayed later than October 31, 1948, it shall be retroactive to October 2, 1948.

#### ARTICLE XIII

This Agreement is to be kept posted in the place of employment so that every employee may have equal and easy access to same.

[fol. 127]

#### ARTICLE XIV

Laundry, tools and sharpening of tools to be furnished free of cost by employer.

#### ARTICLE XV

The self-service system of merchandising meat under the jurisdiction of the Union as set forth in ARTICLE II will be considered a violation of this Agreement. Frozen poultry may be sold from self-service cases during market hours as provided for in ARTICLE III.

#### ARTICLE XVI

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Nothing contained in this Agreement is intended to violate any Federal Law, Rule, or Regulation made pursuant thereto. If any part of this Agreement is construed to be in such violation, then that part shall be made null and void and the parties agree that they will immediately begin negotiations to replace said void part with a valid provision.

EMPLOYER:

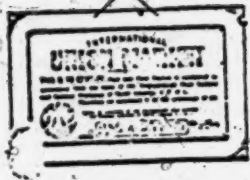
SIGNED FOR LOCAL 546  
AMALGAMATED MEAT CUT-  
TERS AND BUTCHER WORK-  
MEN OF NORTH AMERICA,  
A. F. of L.

Address..... President:.....

Dated at Chicago....., 1947 Sec'y-Treas.:.....



Oct 7, 1948



AMALGAMATED MEAT CUTTERS  
AND B. W. OF N. A. 58C1415

Affiliated with  
American Federation of Labor  
Illinois Federation of Labor  
Chicago Federation of Labor

Def. no. 401

R. EMMETT KELLY  
Sec.-Treas. Local 546  
130 N. Wells St., Chicago  
Room 1602  
FRanklin 2-0030

LOCAL 546

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FILED

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[fol. 129]

IN UNITED STATES  
FOR THE NORTHERN DISTRICT  
OF ILLINOIS  
DEFENDANTS' EXHIBIT

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The parties hereto certify that they are empowered and duly author-  
ized to sign this Agreement.

ARTICLE XXI

Nothing contained in this Agreement is intended to violate any Fed-  
eral Law, Rule, or Regulation made pursuant thereto. If any part of  
this Agreement is construed to be in such violation, then that part shall  
be made null and void and the parties agree that they will immediately  
begin negotiations to replace said void part with a valid provision.

EMPLOYER: SIGNED FOR LOCAL 546  
AMALGAMATED MEAT CUT-  
TERS AND BUTCHER WORK-  
MEN OF NORTH AMERICA,  
A. F. of L.

Address..... President:.....

Dated at Chicago....., 194... Sec'y-Treas.:.....

[fol. 132]

Chicago and County of Cook, entered into between..... hereinafter called the "employer", all meat markets and chain store meat markets, all combination Grocery and Meat Markets in Chicago and County of Cook; and the AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 546 (A.F. Of L.) acting as the Collective Bargaining Agent for its members. This Contract approved and passed by the International Executive Board at the General Office the third day of November, 1948.

O'CLOCK

WERT A. WAGNER, JR.  
CLERK

## ARTICLE I

FOR AND IN CONSIDERATION of the mutual promises of the parties hereto and for other good and valuable considerations, receipt of which is hereby acknowledged, this Agreement is entered into.

## ARTICLE II

The Employer recognizes and agrees that said Union is and shall be the sole and exclusive collective bargaining agency for and on behalf of all meat cutters and butcher workmen employed by said employer on their premises; including those workers processing, packing, wrapping and selling frozen fresh meats.

The parties agree that all fish, poultry, rabbits, meats and its kindred products, fresh or frozen, except

- sliced boiled, baked or barbecued ham;
- sliced packaged bacon;
- sliced packaged dried beef;
- sliced packaged Canadian bacon;
- all smoked sausage;
- canned and glassed meats of all kinds;
- all ready to eat prepared meats, poultry and fish;
- frozen packaged fish;
- and all meats not for human consumption,

will be sold cut, prepared and fabricated by meat department employees, and said cutting, preparing, fabricating and packaging of above products into retail cuts will be done on the premises or immediately adjacent thereto.

## ARTICLE III

### WORKING HOURS

(a) Eight and one-half (8½) hours shall constitute the basic work day, Monday through Saturday; work to begin at 8:30 A.M. and stop at 6:00 P.M., allowing one (1) hour for lunch, said hour to begin no earlier than 11:00 A.M., nor end later than 2:00 P.M. This to apply to all markets whether manned by one or more than one employee. Employees must be dressed and ready for work at 8:30 A.M. Monday through Saturday.

(b) Five (5) days shall constitute the basic work week, to be worked Monday through Saturday, with one (1) full day off within each shop, for each employee at the employers discretion. The day off shall be rotated or in accordance with the mutual agreement of the employer and his employees.

(c) Market operating hours shall be 9:00 A.M. to 6:00 P.M., MONDAY THROUGH SATURDAY, inclusive.

(d) Any employee called to work on the sixth (6th) day in any regular work week, shall be guaranteed Four Hours and Fifteen Minutes work. Reporting time on the sixth (6th) day shall be at either 8:30 A.M. or 1:45 P.M.

[fol. 129]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANTS' EXHIBIT 401



#### ARTICLE IV

(a) There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day. When and if Victory Day is declared a National Legal Holiday it shall be made a part of this ARTICLE.

(b) Employees who are absent the regularly scheduled work day before, or day after, a holiday, or both, except in the case of proven illness or unavoidable absence shall not receive holiday pay, but shall be paid only for the hours actually worked.

(c) During a holiday week the employee shall receive a full week's pay for four (4) days of work; if an employee works the fifth (5th) day during a holiday week, or the sixth (6th) day during a regular work week he shall be paid at the following rates:

	FULL DAY	HALF DAY
HEAD MEAT CUTTERS.....	\$16.00	\$9.00
JOURNEYMEN.....	13.00	8.50
1st YEAR APPRENTICES.....	9.50	5.00
2nd YEAR APPRENTICES.....	11.00	6.00
3rd YEAR APPRENTICES.....	12.00	7.00

(d) It is agreed that the Head Meat Cutters and Journeymen will be given preference over Apprentices for work on the sixth (6th) full or half day during a regular work week, and on the fifth (5th) full or half day during a holiday week.

#### ARTICLE V

##### HEAD MEAT CUTTER AND JOURNEYMAN'S CLAUSE

(a) The term "Head Meat Cutter" shall be construed to mean a journeyman meat cutter who is responsible for the efficient management of the market and shall receive not less than Seventy-eight Dollars and Fifty Cents (\$78.50) weekly.

(b) All Journeymen meat cutters shall receive not less than Seventy-Two Dollars (\$72.00) weekly as a minimum wage. Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages, or working conditions.

(c) Extra men to receive not less than Fifteen Dollars (\$15.00) per day, unless they work the full week, when they are to receive the regular salary of the permanent meat cutters whose places they are filling.

(d) The meat cutters employed in low volume shops must receive the Journeyman scale of wages provided for in this Agreement. It is distinctly understood that there shall be no concession for the said low volume shops.

#### ARTICLE VI

(a) Any employee who has given service for the course of one (1) year shall be entitled to one (1) week's vacation with pay. After two years of service he shall be entitled to two (2) weeks' vacation with pay. A man relieving a Head Meat Cutter on vacation shall receive the Contract rate of pay for Head Meat Cutters. In case of dispute, the matter shall be referred to arbitration, as provided for in ARTICLE XVIII.

(b) Whenever a holiday as listed in ARTICLE IV falls within an employee's vacation period, the employee shall receive an extra day's pay or a subsequent day off, at the employers option.

#### ARTICLE VII

(a) It is expressly understood that no customer shall be served who comes into the market before or after the hours set forth in ARTICLE III, that all customers in the market at the closing hour shall be served; that all meats will be properly taken care of and the market placed in a

Chicago and County of Cook, all meat markets and chain store meat markets, all combination Grocery and Meat Markets in Chicago and County of Cook; and the AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 546 (A.F. Of L.) acting as the Collective Bargaining Agent for its members. This Contract approved and passed by the International Executive Board at the General Office the thirty-first day of October, 1949.

#### ARTICLE I

FOR AND IN CONSIDERATION of the mutual promises of the parties hereto and for other good and valuable considerations, receipt of which is hereby acknowledged, this Agreement is entered into.

#### ARTICLE II

The Employer recognizes and agrees that said Union is and shall be the sole and exclusive collective bargaining agency for and on behalf of all meat cutters and butcher workmen employed by said employer on their premises; including those workers processing, packing, wrapping and selling frozen fresh meats.

The parties agree that all fish, poultry, rabbits, meats and its kindred products, fresh or frozen, except

- sliced boiled, baked or barbecued ham;
- sliced packaged bacon;
- sliced packaged dried beef;
- sliced packaged Canadian bacon;
- all smoked sausage;
- canned and glassed meats of all kinds;
- all ready to eat prepared meats, poultry and fish;
- frozen packaged fish;
- and all meats not for human consumption.

will be sold cut, prepared and fabricated by meat department employees, and said cutting, preparing, fabricating and packaging of above products into retail cuts will be done on the premises or immediately adjacent thereto.

#### ARTICLE III

##### WORKING HOURS

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(c) Market operating hours shall be 9:00 A.M. to 6:00 P.M., MONDAY THROUGH SATURDAY, inclusive.

(d) Any employee called to work on the sixth (6th) day in any regular work week, shall be guaranteed Four Hours and Fifteen Minutes work. Reporting time on the sixth (6th) day shall be at either 8:30 A.M. or 1:45 P.M.

MAY 28 1963

AT O'CLOCK  
ELBERT A. WAGNER, JR.  
CLERK

604 1949

[fol. 130]

[fol. 133]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEPENDANTS' EXHIBIT 40J

1st YEAR APPRENTICES.....	0.50	5.00
2nd YEAR APPRENTICES.....	11.00	6.00
3rd YEAR APPRENTICES.....	12.00	7.00

(d) It is agreed that the Head Meat Cutters and Journeymen will be given preference over Apprentices for work on the sixth (6th) full or half day during a regular work week, and on the fifth (5th) full or half day during a holiday week.

## ARTICLE V.

### HEAD MEAT CUTTER AND JOURNEYMAN'S CLAUSE

(a) The term "Head Meat Cutter" shall be construed to mean a journeyman meat cutter who is responsible for the efficient management of the market and shall receive not less than Seventy-eight Dollars and Fifty Cents (\$78.50) weekly.

(b) All Journeymen meat cutters shall receive not less than Seventy-Two Dollars (\$72.00) weekly as a minimum wage. Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages, or working conditions.

(c) Extra men to receive not less than Fifteen Dollars (\$15.00) per day, unless they work the full week, when they are to receive the regular salary of the permanent meat cutters whose places they are filling.

(d) The meat cutters employed in low volume shops must receive the Journeyman scale of wages provided for in this Agreement. It is distinctly understood that there shall be no concession for the said low volume shops.

## ARTICLE VI

(a) Any employee who has given service for the course of one (1) year shall be entitled to one (1) week's vacation with pay. After two years of service he shall be entitled to two (2) weeks' vacation with pay. A man relieving a Head Meat Cutter on vacation shall receive the Contract rate of pay for Head Meat Cutters. In case of dispute, the matter shall be referred to arbitration, as provided for in ARTICLE XVIII.

(b) Whenever a holiday as listed in ARTICLE IV falls within an employee's vacation period, the employee shall receive an extra day's pay or a subsequent day off, at the employers option.

## ARTICLE VII

(a) It is expressly understood that no customer shall be served who comes into the market before or after the hours set forth in ARTICLE III, that all customers in the market at the closing hour shall be served; that all meats will be properly taken care of and the market placed in a sanitary condition. Such work not to exceed fifteen minutes and not to be construed as over-time.

(b) Overtime after eight and one-half (8½) hours in any one day may be worked at the following rates:

HEAD MEAT CUTTERS.....	\$2.77 per hour
JOURNEYMEN .....	2.54 per hour

### APPRENTICES

FIRST YEAR .....	1.64 per hour
SECOND YEAR .....	1.85 per hour
THIRD YEAR .....	2.06 per hour

(c) Employees shall not take inventory outside of regular working hours.



ARTICLE VIII  
APPRENTICE CLAUSE

(a) Employers are permitted to employ Apprentices not to exceed two (2) for each five (5) journeymen employed provided that a quarterly report shall be furnished to the local Union.

Weekly wage scale of Apprentices to be as follows:

FIRST YEAR .....	\$16.50
SECOND YEAR .....	52.50
THIRD YEAR .....	58.50

(b) After serving three (3) years of apprenticeship they shall be classified as journeymen meat cutters and shall receive the journeyman rate of pay.

(c) Apprentices shall not work part time or as extra men on Saturdays, or the day preceding holidays. Apprentices must be at least sixteen (16) years of age.

ARTICLE IX

WHEN PERMITTED BY LAW THE FOLLOWING CLAUSES (A), (B) AND (C)  
SHALL AUTOMATICALLY BECOME EFFECTIVE:

(a) When in need of help, the employer must give preference to members in good standing of Local 546.

(b) The Employer agrees to employ and keep in employment only such persons who are members in good standing of said Union. All new employees employed by the employer shall, after the effective date of this agreement, within thirty (30) days, become members of the Union, and shall be required to remain members in good standing as a condition of the continuation of their employment. The employer agrees that, upon written notice from the Union, they will discharge at the Union's request, any person, within a period of fifteen (15) days, who shall not be in good standing.

(c) Business Representatives have full authority and approval from both parties to this Agreement to immediately remove and require the discharge of any men working below the scale fixed herein.

(d) No employee shall be discharged without good and sufficient cause; drunkenness, dishonesty, incompetency, incivility or an over supply of help will be sufficient cause for dismissal, or help can be dismissed providing preference be given to Union men in replacing help.

ARTICLE X

It will be the duty of the employer to prominently display Union shop cards in all establishments wherein Union meat cutters are employed. These shop cards shall remain the property of the Union, and the employer shall have their usage only until such time as the Union shall request their return. The employer agrees to surrender same immediately, upon demand by the Union.

ARTICLE XI

(a) The terms of this Agreement shall commence October 4, 1948, and shall expire at 12:00 Midnight, October 1, 1949.

(b) Any alteration that may be desired by either party to this Agreement at the time of expiration must be made in writing not later than sixty (60) days prior to its expiration. In case neither party serves notice for a change in this Agreement, at its expiration, it shall automatically renew itself through October 1, 1950.



## ARTICLE IX

WHEN PERMITTED BY LAW THE FOLLOWING CLAUSES (A), (B) AND (C) SHALL AUTOMATICALLY BECOME EFFECTIVE:

(a) When in need of help, the employer must give preference to members in good standing of Local 546.

(b) The Employer agrees to employ and keep in employment only such persons who are members in good standing of said Union. All new employees employed by the employer shall, after the effective date of this agreement, within thirty (30) days, become members of the Union, and shall be required to remain members in good standing as a condition of the continuation of their employment. The employer agrees that, upon written notice from the Union, they will discharge at the Union's request, any person, within a period of fifteen (15) days, who shall not be in good standing.

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## ARTICLE XII

If the adoption of the new Agreement be delayed later than October 31, 1949, it shall be retroactive to October 1, 1949.

## ARTICLE XIII

This Agreement is to be kept posted in the place of employment so that every employee may have equal and easy access to same.

## ARTICLE XIV

Laundry, tools and sharpening of tools to be furnished free of cost by employer.

[fol. 131]

#### ARTICLE XV

The self-service system of merchandising meat under the jurisdiction of the Union as set forth in ARTICLE II will be considered a violation of this Agreement. Frozen poultry may be sold from self-service cases during market hours as provided for in ARTICLE III.

#### ARTICLE XVI

.....agree not to negotiate with any but the duly elected officers of Local 546 and further agree not to make a Contract with anyone not affiliated with Local 546.

#### ARTICLE XVII

Any member of Local 546 who is in good standing and is in business for himself who may desire to affiliate with the .....  
.....may apply for a withdrawal card, provided the request be accompanied by a similar request from the .....  
.....Withdrawal card may be obtained upon application to the Executive Board of Local 546.

#### ARTICLE XVIII

##### ARBITRATION CLAUSE

All grievances which cannot be adjusted by Local 546 and employer shall be referred to an Arbitration Board consisting of two (2) members to be named by the Union, two (2) by the affected employer and one (1) to be agreed upon by the four (4) already selected.

No strike, cessation of work, picketing, boycott or lock-out to occur when arbitration has been requested by either party, provided that the dispute has been heard and decided within a thirty (30) day period from submission.

#### ARTICLE XIX

Local 546, if requested, will furnish men who will work to the best interest of the employer in every way, just and lawful, who will give honest and diligent service to patrons of the employer's establishment who will do everything within their power for the uplifting of the meat industry.

#### ARTICLE XX

Any regular employee unable to work because of injuries received during the regularly scheduled work-week and whose injuries arose out of or during the course of his employment shall be entitled to a full day's pay for each day lost because of such injuries, but not exceeding four (4) days in any such work week; provided, however, that the employee shall report upon receipt of the injury to the employer's physician whose decision with respect to the length of time required off shall be controlling; provided further, that nothing in this provision shall affect any rights accrued to either party under the State Workmen's Compensation Act, and that the employer shall receive credit for any payment made under this provision should compensation be awarded by the State Commission.

The parties hereto certify that they are empowered and duly authorized to sign this Agreement.

1949-1950

**AMALGAMATED MEAT CUTTERS  
AND B. W OF N. A.**

*Affiliated with  
American Federation of Labor  
Illinois Federation of Labor  
Chicago Federation of Labor.*

**LOCAL 546**

Regular Meetings the 2nd Tuesday Night of each  
month at Meat Cutters Hall, 128 N. Wells St.



**R. EMMETT KELLY**  
Sec.-Treas. Local 546  
120 N. Wells St. Chicago  
Room 1602  
Franklin 2-0030

**DOCKET**

**FILED**

**MAY 28 1963**

**AT O'CLOCK**  
**ELBERT A. WAGNER, JR.**  
CLERK

**Articles of Agreement Governing Meat Markets in the City of Chicago and County of Cook, entered into between..... hereinafter called the "employer", all meat markets and chain store meat markets, all combination Grocery and Meat Markets in Chicago and County of Cook; and the AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 546 (A.F. Of L.) acting as the Collective Bargaining Agent for its members. This Contract approved and passed by the International Executive Board at the General Office the thirty-first day of October, 1949.**

**ARTICLE I**

**FOR AND IN CONSIDERATION of the mutual promises of the parties hereto and for other good and valuable considerations, receipt of which is hereby acknowledged, this Agreement is entered into.**

**ARTICLE II**

The Employer recognizes and agrees that said Union is and shall be the sole and exclusive collective bargaining agency for and on behalf of all meat cutters and butcher workmen employed by said employer on their premises; including those workers processing, packing, wrapping and selling frozen fresh meats.

The parties agree that all fish, poultry, rabbits, meats and its kindred products, fresh or frozen, except

- sliced boiled, baked or barbecued ham;
- sliced packaged bacon;
- sliced packaged dried beef;
- sliced packaged Canadian bacon;
- all smoked sausage;
- canned and glassed meats of all kinds;
- all ready to eat prepared meats, poultry and fish;
- frozen packaged fish;
- and all meats not for human consumption,

will be sold cut, prepared and fabricated by meat department employees, and said cutting, preparing, fabricating and packaging of above products into retail cuts will be done on the premises or immediately adjacent thereto.

**ARTICLE III**

**WORKING HOURS**

(a) Eight and one-half (8½) hours shall constitute the basic work day, Monday through Saturday; work to begin at 8:30 A.M. and stop at 6:00 P.M., allowing one (1) hour for lunch, said hour to begin no earlier than 11:00 A.M., nor end later than 2:00 P.M. This to apply to all markets whether manned by one or more than one employee. Employees

[fol. 133]

IN UNITED STATES DIS  
FOR THE NORTHERN DISTR

DEFENDANTS' EXH

#### ARTICLE IV

(a) There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day. When and if Victory Day is declared a National Legal Holiday it shall be made a part of this ARTICLE.

(b) Employees who are absent the regularly scheduled work day before, or day after, a holiday, or both, except in the case of proven illness or unavoidable absence shall not receive holiday pay, but shall be paid only for the hours actually worked.

(c) During a holiday week the employee shall receive a full week's pay for four (4) days of work; if an employee works the fifth (5th) day during a holiday week, or the sixth (6th) day during a regular work week he shall be paid at the following rates:

	FULL DAY	HALF DAY
HEAD MEAT CUTTERS.....	\$16.50	\$9.25
JOURNEYMEN .....	15.50	8.75
1st YEAR APPRENTICES.....	10.00	5.25
2nd YEAR APPRENTICES.....	11.50	6.25
3rd YEAR APPRENTICES.....	12.50	7.25

(d) It is agreed that the Head Meat Cutters and Journeymen will be given preference over Apprentices for work on the sixth (6th) full or half day during a regular work week, and on the fifth (5th) full or half day during a holiday week.

#### ARTICLE V

##### HEAD MEAT CUTTER AND JOURNEYMAN'S CLAUSE

(a) The term "Head Meat Cutter" shall be construed to mean a journeyman meat cutter who is responsible for the efficient management of the market and shall receive not less than Eighty-one Dollars and Fifty Cents (\$81.50) weekly.

(b) All Journeymen meat cutters shall receive not less than Seventy-five Dollars (\$75.00) weekly as a minimum wage. Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages, or working conditions.

(c) Extra men to receive not less than Fifteen Dollars (\$15.00) per day, unless they work the full week, when they are to receive the regular salary of the permanent meat cutters whose places they are filling.

(d) The meat cutters employed in low volume shops must receive the Journeyman scale of wages provided for in this Agreement. It is distinctly understood that there shall be no concession for the said low volume shops.

#### ARTICLE VI

(a) Any employee who has given service for the course of one (1) year shall be entitled to one (1) week's vacation with pay. After two years of service he shall be entitled to two (2) weeks' vacation with pay. A man relieving a Head Meat Cutter on vacation shall receive the Contract rate of pay for Head Meat Cutters. In case of dispute, the matter shall be referred to arbitration, as provided for in ARTICLE XVIII.

(b) Whenever a holiday as listed in ARTICLE IV falls within an employee's vacation period, the employee shall receive an extra day's pay or a subsequent day off, at the employers option.



1st YEAR APPRENTICES.....	10.00	5.55
2nd YEAR APPRENTICES.....	11.50	6.25
3rd YEAR APPRENTICES.....	12.50	7.25

(d) It is agreed that the Head Meat Cutters and Journeymen will be given preference over Apprentices for work on the sixth (6th) full or half day during a regular work week, and on the fifth (5th) full or half day during a holiday week.

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(b) Overtime after eight and one-half (8½) hours in any one day may be worked at the following rates:

HEAD MEAT CUTTERS.....	\$2.88 per hour
JOURNEYMEN .....	2.64 per hour

### APPRENTICES

FIRST YEAR .....	1.74 per hour
SECOND YEAR .....	1.95 per hour
THIRD YEAR .....	2.17 per hour

(c) Employees shall not take inventory outside of regular working hours.



## ARTICLE VIII

### APPRENTICE CLAUSE

(a) Employers are permitted to employ Apprentices not to exceed two (2) for each five (5) journeymen employed provided that a quarterly report shall be furnished to the local Union.

Weekly wage scale of Apprentices to be as follows:

FIRST YEAR .....\$49.50

SECOND YEAR ..... 55.50

THIRD YEAR ..... 61.50

(b) After serving three (3) years of apprenticeship they shall be classified as journeymen meat cutters and shall receive the journeyman rate of pay.

(c) Apprentices shall not work part time or as extra men on Saturdays, or the day preceding holidays. Apprentices must be at least sixteen (16) years of age.

## ARTICLE IX

WHEN PERMITTED BY LAW THE FOLLOWING CLAUSES (A), (B) AND (C) SHALL AUTOMATICALLY BECOME EFFECTIVE:

(a) When in need of help, the employer must give preference to members in good standing of Local 546.

(b) The Employer agrees to employ and keep in employment only such persons who are members in good standing of said Union. All new employees employed by the employer shall, after the effective date of this agreement, within thirty (30) days, become members of the Union, and shall be required to remain members in good standing as a condition of the continuation of their employment. The employer agrees that, upon written notice from the Union, they will discharge at the Union's request, any person, within a period of fifteen (15) days, who shall not be in good standing.

(c) Business Representatives have full authority and approval from both parties to this Agreement to immediately remove and require the discharge of any men working below the scale fixed herein.

(d) No employee shall be discharged without good and sufficient cause; drunkenness, dishonesty, incompetency, incivility or an over supply of help will be sufficient cause for dismissal, or help can be dismissed providing preference be given to Union men in replacing help.

## ARTICLE X

It will be the duty of the employer to prominently display Union shop cards in all establishments wherein Union meat cutters are employed. These shop cards shall remain the property of the Union, and the employer shall have their usage only until such time as the Union shall request their return. The employer agrees to surrender same immediately, upon demand by the Union.

## ARTICLE XI

(a) The terms of this Agreement shall commence October 3, 1949, and shall expire at 12:00 Midnight, September 30, 1950.

(b) Any alteration that may be desired by either party to this Agreement at the time of expiration must be made in writing not later than sixty (60) days prior to its expiration. In case neither party serves notice for a change in this Agreement, at its expiration, it shall automatically renew itself through October 3, 1951.

THE FOLLOWING CLAUSES (A), (B) AND (C)  
SHALL AUTOMATICALLY BECOME EFFECTIVE:

(a) When in need of help, the employer must give preference to members in good standing of Local 546.

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(d) No employee shall be discharged without good and sufficient cause; drunkenness, dishonesty, incompetency, incivility or an over supply of help will be sufficient cause for dismissal, or help can be dismissed providing preference be given to Union men in replacing help.

#### ARTICLE X

It will be the duty of the employer to prominently display Union shop cards in all establishments wherein Union meat cutters are employed. These shop cards shall remain the property of the Union, and the employer shall have their usage only until such time as the Union shall request their return. The employer agrees to surrender same immediately, upon demand by the Union.

#### ARTICLE XI

(a) The terms of this Agreement shall commence October 3, 1949, and shall expire at 12:00 Midnight, September 30, 1950.

(b) Any alteration that may be desired by either party to this Agreement at the time of expiration must be made in writing not later than sixty (60) days prior to its expiration. In case neither party serves notice for a change in this Agreement, at its expiration, it shall automatically renew itself through October 1, 1951.

#### ARTICLE XII

If the adoption of the new Agreement be delayed later than October 31, 1950, it shall be retroactive to September 30, 1950.

#### ARTICLE XIII

This Agreement is to be kept posted in the place of employment so that every employee may have equal and easy access to same.

#### ARTICLE XIV

Laundry, tools and sharpening of tools to be furnished free of cost by employer.

#### ARTICLE XV

The self-service system of merchandising meat under the jurisdiction of the Union as set forth in ARTICLE II will be considered a violation of this Agreement. Frozen poultry may be sold from self-service cases during market hours as provided for in ARTICLE III.

#### ARTICLE XVI

.....agree not to negotiate with any but the duly elected officers of Local 546 and further agree not to make a Contract with anyone not affiliated with Local 546.

#### ARTICLE XVII

Any member of Local 546 who is in good standing and is in business for himself who may desire to affiliate with the .....  
.....may apply for a withdrawal card, provided the request be accompanied by a similar request from the.....  
.....Withdrawal card may be obtained upon application to the Executive Board of Local 546.

#### ARTICLE XVIII

##### ARBITRATION CLAUSE

All grievances which cannot be adjusted by Local 546 and employer shall be referred to an Arbitration Board consisting of two (2) members to be named by the Union, two (2) by the affected employer and one (1) to be agreed upon by the four (4) already selected.

No strike, cessation of work, picketing, boycott or lock-out to occur when arbitration has been requested by either party, provided that the dispute has been heard and decided within a thirty (30) day period from submission.

#### ARTICLE XIX

Local 546, if requested, will furnish men who will work to the best interest of the employer in every way, just and lawful, who will give honest and diligent service to patrons of the employer's establishment, who will do everything within their power for the uplifting of the meat industry.

#### ARTICLE XX

Any regular employee unable to work because of injuries received during the regularly scheduled work-week and whose injuries arose out of or during the course of his employment shall be entitled to a full day's pay for each day lost because of such injuries, but not exceeding four (4) days in any such work week; provided, however, that the employee shall report upon receipt of the injury to the employer's physician whose decision with respect to the length of time required off shall be controlling; provided further, that nothing in this provision shall affect any rights accrued to either party under the State Workmen's Compensation Act, and that the employer shall receive credit for any payment made under this provision should compensation be awarded by the State Commission.

The parties hereto certify that they are empowered and duly authorized to sign this Agreement.

#### ARTICLE XXI

Nothing contained in this Agreement is intended to violate any Federal Law, Rule, or Regulation made pursuant thereto. If any part of this Agreement is construed to be in such violation, then that part shall be made null and void and the parties agree that they will immediately begin negotiations to replace said void part with a valid provision.

#### ARTICLE XXII

The parties agree that during the life of this agreement both parties will meet at reasonable times for the purpose of agreeing to mutually satisfactory terms and conditions of employment.

.....Withdrawal card may be obtained upon application to the Executive Board of Local 546.

### ARTICLE XVIII

#### ARBITRATION CLAUSE

All grievances which cannot be adjusted by Local 546 and employer shall be referred to an Arbitration Board consisting of two (2) members to be named by the Union, two (2) by the affected employer and one (1) to be agreed upon by the four (4) already selected:

No strike, cessation of work, picketing, boycott or lock-out to occur when arbitration has been requested by either party, provided that the dispute has been heard and decided within a thirty (30) day period from submission.

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Local 546, if requested, will furnish men who will work to the best interest of the employer in every way, just and lawful, who will give honest and diligent service to patrons of the employer's establishment, who will do everything within their power for the uplifting of the meat industry.

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### ARTICLE XXII

The parties agree that during the life of this agreement both parties will meet at reasonable times for the purpose of agreeing to mutually satisfactory terms and conditions of employment respecting self service markets.

SIGNED FOR LOCAL 546, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, A. F. of L.

President.....

Sec'y-Treas.....

EMPLOYER:.....

.....

.....

Address.....

Dated at Chicago....., 19.....

[fol. 136]



1951-1952



E. EMMETT KELLY  
Sec. - Treas. Local 546  
130 N. Wells St., Chicago  
Room 1602  
Franklin 2-0030

## AMALGAMATED MEAT CUTTERS AND B. W. OF N. A.

Affiliated with  
American Federation of Labor  
Illinois Federation of Labor  
Chicago Federation of Labor

LOCAL 546

Regular Meetings the 2nd Tuesday Night of each  
month at Meat Cutters Hall, 128 North Wells Street

Articles of Agreement Governing Meat Markets in the City of  
Chicago and County of Cook; entered into between.....  
hereinafter called the "employer", all meat markets and chain store meat  
markets, all combination Grocery and Meat Markets in Chicago and  
County of Cook; and the AMALGAMATED MEAT CUTTERS AND  
BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 546 (A.F. of L.)  
acting as the Collective Bargaining Agent for its members. This Contract  
approved and passed by the International Executive Board at the  
General Office the nineteenth day of October, 1951.

### ARTICLE I

FOR AND IN CONSIDERATION of the mutual promises of the  
parties hereto and for other good and valuable considerations, receipt  
of which is hereby acknowledged, this Agreement is entered into.

### ARTICLE II

The Employer recognizes and agrees that said Union is and shall  
be the sole and exclusive collective bargaining agency for and on behalf  
of all meat cutters and butcher workmen employed by said employer on  
their premises; including those workers processing, packing, wrapping  
and selling frozen fresh meats.

The parties agree that all fish, poultry, rabbits, meats and its kindred  
products, fresh or frozen, except

sliced boiled, baked or barbecued ham;  
sliced packaged bacon;  
sliced packaged dried beef;  
sliced packaged Canadian bacon;  
all smoked sausage;  
canned and glassed meats of all kinds;  
all ready to eat prepared meats, poultry and fish;  
frozen packaged fish;  
and all meats not for human consumption,

will be sold cut, prepared and fabricated by meat department employees,  
and said cutting, preparing, fabricating and packaging of above products  
into retail cuts will be done on the premises or immediately adjacent  
thereto.

### ARTICLE III

#### WORKING HOURS

(a) Eight and one-half (8½) hours shall constitute the basic work  
day, Monday through Saturday; work to begin at 8:30 A.M. and stop at  
6:00 P.M., allowing one (1) hour for lunch, said hour to begin no earlier  
than 11:00 A.M., nor end later than 2:00 P.M. This to apply to all  
markets whether manned by one or more than one employee. Employees  
must be dressed and ready for work at 8:30 A.M. Monday through

.....may apply for a withdrawal card, provided the  
request be accompanied by a similar request from the.....  
.....Withdrawal card may be obtained  
upon application to the Executive Board of Local 546.

### ARTICLE XVIII

#### ARBITRATION CLAUSE

All grievances which cannot be adjusted by Local 546 and employer  
shall be referred to an Arbitration Board consisting of two (2) members  
to be named by the Union, two (2) by the affected employer and one (1)  
to be agreed upon by the four (4) already selected.

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when arbitration has been requested by either party, provided that the  
dispute has been heard and decided within a thirty (30) day period  
from submission.

### ARTICLE XIX

Local 546, if requested, will furnish men who will work to the best  
interest of the employer in every way, just and lawful, who will give  
honest and diligent service to patrons of the employer's establishment,  
who will do everything within their power for the uplifting of the meat  
industry.

### ARTICLE XX

Any regular employee unable to work because of injuries received  
during the regularly scheduled work-week and whose injuries arose out  
of or during the course of his employment shall be entitled to a full day's  
pay for each day lost because of such injuries, but not exceeding four (4)  
days in any such work week; provided, however, that the employee shall  
report upon receipt of the injury to the employer's physician whose  
decision with respect to the length of time required off shall be control-  
ling; provided further, that nothing in this provision shall effect any  
rights accrued to either party under the State Workmen's Compensation  
Act, and that the employer shall receive credit for any payment made  
under this provision should compensation be awarded by the State Com-  
mission.

The parties hereto certify that they are empowered and duly author-  
ized to sign this Agreement.

### ARTICLE XXI

Nothing contained in this Agreement is intended to violate any Fed-  
eral Law, Rule, or Regulation made pursuant thereto. If any part of  
this Agreement is construed to be in such violation, then that part shall  
be made null and void and the parties agree that they will immediately  
begin negotiations to replace said void part with a valid provision.

### ARTICLE XXII

The parties agree that during the life of this agreement both parties  
will meet at reasonable times for the purpose of agreeing to mutually  
satisfactory terms and conditions of employment respecting self service  
markets.

SIGNED FOR LOCAL 546, AMALGAMATED MEAT CUTTERS  
AND BUTCHER WORKMEN OF NORTH AMERICA, A. F. of L.

President.....

Sec'y-Treas.....

EMPLOYER:.....

Address.....

Dated at Chicago....., 19.....

FILED

MAY 28 1963

AT O'CLOCK  
ELBERT A. WAGNER, JR.  
CLERK

[fol. 137]

IN UNITED STATES DISTRICT  
FOR THE NORTHERN DISTRICT

DEFENDANT'S EXHIBIT

[fol. 140]



64  
Articles of Agreement Governing Meat Markets in the City of Chicago and County of Cook, entered into between ..... hereinafter called the "employer", all meat markets and chain store meat markets, all combination Grocery and Meat Markets in Chicago and County of Cook; and the AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 546 (A.F. of L.) acting as the Collective Bargaining Agent for its members. This Contract approved and passed by the International Executive Board at the General Office the nineteenth day of October, 1951.

ARTICLE I

FOR AND IN CONSIDERATION OF the mutual promises of the parties hereto and for other good and valuable considerations, receipt of which is hereby acknowledged, this Agreement is entered into.

58CM45  
FILED  
MAY 28 1963  
AT 0'CLOCK  
ELBERT A. WAGNER, JR.  
CLERK

ARTICLE II

The Employer recognizes and agrees that said Union is and shall be the sole and exclusive collective bargaining agency for and on behalf of all meat cutters and butcher workmen employed by said employer on their premises; including those workers processing, packing, wrapping and selling frozen fresh meats.

The parties agree that all fish, poultry, rabbits, meats and its kindred products, fresh or frozen, except

sliced boiled, baked or barbecued ham;  
sliced packaged bacon;  
sliced packaged dried beef;  
sliced packaged Canadian bacon;  
all smoked sausage;  
canned and glassed meats of all kinds;  
all ready to eat prepared meats, poultry and fish;  
frozen packaged fish;  
and all meats not for human consumption,

will be sold cut, prepared and fabricated by meat department employees, and said cutting, preparing, fabricating and packaging of above products into retail cuts will be done on the premises or immediately adjacent thereto.

ARTICLE III

WORKING HOURS

(a) Eight and one-half (8½) hours shall constitute the basic work day, Monday through Saturday; work to begin at 8:30 A.M. and stop at 6:00 P.M., allowing one (1) hour for lunch, said hour to begin no earlier than 11:00 A.M., nor end later than 2:00 P.M. This to apply to all markets whether manned by one or more than one employee. Employees must be dressed and ready for work at 8:30 A.M. Monday through Saturday.

(b) Five (5) days shall constitute the basic work week, to be worked Monday through Saturday, with one (1) full day off within each shop, for each employee at the employers discretion. The day off shall be rotated or in accordance with the mutual agreement of the employer and his employees.

(c) Market operating hours shall be 9:00 A.M. to 6:00 P.M., MONDAY THROUGH SATURDAY, inclusive.

(d) Any employee called to work on the sixth (6th) day in any regular work week, shall be guaranteed Four hours and Fifteen Minutes work. Reporting time on the sixth (6th) day shall be either 8:30 A.M. or 1:45 P.M.

[fol. 137]  
IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
DEFENDANTS' EXHIBIT 40K



ARTICLE IV

(a) There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day. When and if Victory Day is declared a National Legal Holiday it shall be made a part of this ARTICLE.

(b) Employees who are absent the regularly scheduled work day before, or after, a holiday, or both, except in the case of proven illness or unavoidable absence shall not receive holiday pay, but shall be paid only for the hours actually worked.

(c) During a holiday week the employee shall receive a full week's pay for four (4) days of work; if an employee works the fifth (5th) day during a holiday week, or the sixth (6th) day during a regular work week he shall be paid at the following rates:

	FULL DAY	HALF DAY
HEAD MEAT CUTTERS.....	\$18.75	\$9.75
JOURNEYMEN .....	17.25	9.25
1st YEAR APPRENTICES.....	12.00	6.50
2nd YEAR APPRENTICES.....	13.00	7.00
3rd YEAR APPRENTICES.....	14.25	7.75

(d) It is agreed that the Head Meat Cutters and Journeymen will be given preference over Apprentices for work on the sixth (6th) full or half day during a regular work week, and on the fifth (5th) full or half day during a holiday week.

ARTICLE V

HEAD MEAT CUTTER AND JOURNEYMAN'S CLAUSE

(a) The term "Head Meat Cutter" shall be construed to mean a journeyman meat cutter who is responsible for the efficient management of the market and shall receive not less than Ninety-one Dollars (\$91.00) weekly.

(b) All Journeymen meat cutters shall receive not less than Eighty-four Dollars and Fifty Cents (\$84.50) weekly as a minimum wage. Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages or working conditions.

(c) Extra men to receive not less than Seventeen Dollars and Twenty-five Cents (\$17.25) per day, unless they work the full week, when they are to receive the regular salary of the permanent meat cutters whose places they are filling.

(d) The meat cutters employed in low volume shops must receive the Journeyman scale of wages provided for in this Agreement. It is distinctly understood that there shall be no concession for the said low volume shops.

ARTICLE VI

(a) Any employee who has given service for the course of one (1) year shall be entitled to one (1) week's vacation with pay. After two years of service he shall be entitled to two (2) weeks' vacation with pay. A man relieving a Head Meat Cutter on vacation shall receive the Contract rate of pay for Head Meat Cutters. In case of dispute, the matter shall be referred to arbitration, as provided for in ARTICLE XVIII.

(b) Whenever a holiday as listed in ARTICLE IV falls within an employee's vacation period, the employee shall receive an extra day's pay or a subsequent day off, at the employers option.

ARTICLE VII

(a) It is expressly understood that no customer shall be served who comes into the market before or after the hours set forth in ARTICLE III, that all customers in the market at the stated hours shall be served.

B. EMMETT KELLY  
Sec. Treas. Local 546  
110 N. Wells St., Chicago  
Room 1602  
Franklin 3-4030

LOCAL 546

Regular Meetings the 2nd Tuesday Night of each month at Meat Cutters Hall, 128 North Wells Street

SELF-SERVICE CONTRACT

AMALGAMATED MEAT CUTTERS  
AND B. W. OF N. A.

LOCAL 546

Articles of agreement governing self-service meat markets in the City of Chicago and County of Cook entered into between

hereinafter called the EMPLOYER, and the AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 546 (A. F. of L.) hereinafter sometimes referred to as the UNION, acting as the exclusive collective bargaining agent for all employees covered by this agreement.

ARTICLE I

SCOPE OF CONTRACT

It is agreed that this contract shall govern the hours, wages and other conditions of employment of EMPLOYER'S meat department employees in SELF-SERVICE MEAT MARKETS only within the geographical jurisdiction of LOCAL 546 and that the hours, wages and other conditions of employment of EMPLOYER'S meat department employees in SERVICE MEAT MARKETS are covered by a separate contract. It is further agreed that the EMPLOYER shall have the sole discretion of determining from time to time which system of merchandising, service or self-service, shall be utilized in each of the EMPLOYER'S markets; provided that the Employer shall comply with the wages, hours and other contractual conditions of employment pertaining to the system of merchandising used in that market.

ARTICLE II

JURISDICTION

(a) The EMPLOYER recognizes and agrees that said UNION is and shall be the sole and exclusive collective bargaining agency for and on behalf of all employees in the meat department of said EMPLOYER who process, pack, wrap, handle and sell frozen and fresh meats on EMPLOYER'S premises, and that it will not negotiate with any but the duly elected officers of the UNION nor contract with anyone not affiliated with the UNION.

(b) Processing. The parties agree that in self-service markets the members of the UNION shall perform all cutting, preparing, fabricating, handling and packaging into retail cuts of all fresh fish and rabbits and all fresh or frozen beef, veal, pork, lamb and mutton, said work to be done only on the premises or immediately adjacent thereto.

(c) Sale. The parties further agree that in self-service markets members of the UNION shall have the exclusive jurisdiction over the sale of all fish, poultry, rabbits and meats, whether fresh or frozen, including delicatessen meats, but excepting sliced package bacon, sliced package Canadian bacon, canned and glassed meats of all kinds and all meats not for human consumption; provided further that the market manager shall receive credit for the sale of all products subject to the Union's jurisdiction.

(d) Definitions of Self-Service, Service and Semi-Self-Service. A self-service market is one in which fresh or frozen beef, veal, lamb, mutton or pork are available for sale on a pre-package self-service basis. It is agreed that any market which is operated on a partially service and partially self-service basis shall be classified as a self-service market if any fresh or frozen beef, veal, lamb, mutton or pork are made available for sale on a pre-package self-service basis, even though there is also a service counter offering custom cutting for those who prefer it. Such semi-self-service market shall be considered a self-service market subject to the terms and conditions and wage scale contained in this SELF-SERVICE CONTRACT.

If no fresh or frozen beef, veal, lamb, mutton or pork are sold on a self-service basis, then the market is a SERVICE MARKET and shall be operated in accordance with the SERVICE CONTRACT. It is further expressly

every employee may have equal and easy access to UNION shop cards in all establishments wherein UNION meat cutters are employed. These cards shall remain the property of the UNION, and the EMPLOYER shall have their usage only until such time as the UNION shall request their return. The EMPLOYER agrees to surrender same immediately upon demand by the UNION.

ARTICLE XV

ARBITRATION

Should any dispute or grievance arise between the EMPLOYER and the UNION or between the EMPLOYER and its employees, concerning the application and/or construction of this contract, the parties agree that such matter shall be adjusted, if possible, by negotiations. In the event the dispute or grievance cannot be composed by negotiations within fifteen (15) days after the inception of the matter in dispute, then it shall be submitted immediately to a Board of Arbitration, consisting of three (3) persons, for final and binding decision. Either party may institute said arbitration proceedings by giving the other party notice thereof in writing, naming one person to act in his behalf on said arbitration board; and the other party shall, within five (5) days after receipt of such written notice, name one person to act in his behalf on said arbitration board. These two so selected shall designate the third member or referee of the Board. In the event these two so selected shall be unable, within fifteen (15) days, to agree upon the third member or referee, then the third member of the Board shall forthwith be designated under the rules and procedures of the Federal Mediation and Conciliation Service. The Board shall hold hearings and render its decision in writing within thirty (30) days with respect to a dispute under ARTICLE 2 (d) and within ninety (90) days with respect to any other dispute. The Board's decision shall be final and binding upon both parties. The decision of any two members of the Board shall be the decision of the Board. If the parties shall agree upon one person to act as Arbitrator, his decision shall be as binding as that of a Board of Arbitration. The compensation and expense, if any, of witnesses and the cost of other evidence shall be borne by the party on whose behalf witnesses are called or the evidence is introduced. Each party shall pay for the compensation and expenses of the arbitrator appointed by it. The compensation and expenses of the third arbitrator and all other costs incurred in conducting the arbitration proceedings shall be borne equally by the parties hereto.

The UNION reserves the right to strike and/or picket the plant of the EMPLOYER in the event the EMPLOYER shall fail or refuse to comply with any decision of a Board of Arbitration within ten days after notice thereof. The EMPLOYER reserves the right to declare a lockout should the UNION fail or refuse to comply with any decision of a Board of Arbitration within ten days after notice thereof.

ARTICLE XVI

ABSENCES DUE TO INJURIES

Any regular employee unable to work because of injuries received during the regularly scheduled workweek and whose injuries arose out of or during the course of his employment shall be entitled to a full day's pay for each day lost because of such injuries, but not exceeding four (4) days in any such workweek, provided, however, that the employee shall report upon receipt of the injury to the EMPLOYER'S physician whose decision with respect to the length of time required off shall be controlling; provided further, that nothing in this provision shall affect any rights accrued to either party under the State Workmen's Compensation Act, and that the EMPLOYER shall receive credit for any payment made under this provision should compensation be awarded by the State Commission.

ARTICLE XVII

Nothing contained in this Agreement is intended to violate any Federal Law, Rule, or Regulation made pursuant thereto. If any part of this Agreement is construed by a court or board of competent jurisdiction to be in such violation, then that part shall be made null and void, the remainder of the contract shall continue in full force and the parties will immediately begin negotiations to replace the void part with a valid provision.

[fol. 138]

[fol. 141]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANTS' EXHIBIT 40L

[fol. 144]

147



2nd YEAR APPRENTICES.....	13.00	7.00
3rd YEAR APPRENTICES.....	14.25	7.75

(d) It is agreed that the Head Meat Cutters and Journeymen will be given preference over Apprentices for work on the sixth (6th) full or half day during a regular work week, and on the fifth (5th) full or half day during a holiday week.

## ARTICLE V

### HEAD MEAT CUTTER AND JOURNEYMAN'S CLAUSE

(a) The term "Head Meat Cutter" shall be construed to mean a journeyman meat cutter who is responsible for the efficient management of the market and shall receive not less than Ninety-one Dollars (\$91.00) weekly.

(b) All Journeymen meat cutters shall receive not less than Eighty-four Dollars and Fifty Cents (\$84.50) weekly as a minimum wage. Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages or working conditions.

(c) Extra men to receive not less than Seventeen Dollars and Twenty-five Cents (\$17.25) per day, unless they work the full week, when they are to receive the regular salary of the permanent meat cutters whose places they are filling.

(d) The meat cutters employed in low volume shops must receive the Journeyman scale of wages provided for in this Agreement. It is distinctly understood that there shall be no concession for the said low volume shops.

## ARTICLE VI

(a) Any employee who has given service for the course of one (1) year shall be entitled to one (1) week's vacation with pay. After two years of service he shall be entitled to two (2) weeks' vacation with pay. A man relieving a Head Meat Cutter on vacation shall receive the Contract rate of pay for Head Meat Cutters. In case of dispute, the matter shall be referred to arbitration, as provided for in ARTICLE XVIII.

(b) Whenever a holiday as listed in ARTICLE IV falls within an employee's vacation period, the employee shall receive an extra day's pay or a subsequent day off, at the employers option.

## ARTICLE VII

(a) It is expressly understood that no customer shall be served who comes into the market before or after the hours set forth in ARTICLE III, that all customers in the market at the closing hour shall be served; that all meats will be properly taken care of and the market placed in a sanitary condition. Such work not to exceed fifteen minutes and not to be construed as overtime.

(b) Overtime after eight and one-half (8½) hours in any one day may be worked at the following rates:

HEAD MEAT CUTTERS.....	\$3.21 per hour
JOURNEYMEN .....	2.98 per hour

### APPRENTICES

FIRST YEAR.....	2.09 per hour
SECOND YEAR.....	2.29 per hour
THIRD YEAR .....	2.51 per hour

(c) Employees shall not take inventory outside of regular working hours.

## ARTICLE VIII

### APPRENTICE CLAUSE

(a) Employers are permitted to employ Apprentices not to exceed two (2) for each five (5) journeymen employed provided that a quarterly report shall be furnished to the local Union.

Weekly wage scale of Apprentices to be as follows:

FIRST YEAR .....	\$59.00
SECOND YEAR .....	65.00
THIRD YEAR .....	71.00

(b) After serving three (3) years of apprenticeship they shall be classified as journeymen meat cutters and shall receive the journeyman rate of pay.

(c) Apprentices shall not work part time or as extra men on Saturdays, or the day preceding holidays. Apprentices must be at least sixteen (16) years of age.

## ARTICLE IX

WHEN PERMITTED BY LAW THE FOLLOWING CLAUSES (A), (B) AND (C) SHALL AUTOMATICALLY BECOME EFFECTIVE

(a) When in need of help, the employer must give preference to members in good standing of Local 546.

(b) The Employer agrees to employ and keep in employment only such persons who are members in good standing of said Union. All new employees employed by the employer shall, after the effective date of this agreement, within thirty (30) days, become members of the Union, and shall be required to remain members in good standing as a condition of the continuation of their employment. The employer agrees that, upon written notice from the Union, they will discharge at the Union's request, any person, within a period of fifteen (15) days, who shall not be in good standing.

(c) Business Representatives have full authority and approval from both parties to this Agreement to immediately remove and require the discharge of any men working below the scale fixed herein.

(d) No employee shall be discharged without good and sufficient cause; drunkenness, dishonesty, incompetency, incivility or an over supply of help will be sufficient cause for dismissal, or help can be dismissed providing preference be given to Union men in replacing help.

## ARTICLE X

It will be the duty of the employer to prominently display Union shop cards in all establishments wherein Union meat cutters are employed. These cards shall remain the property of the Union, and the employer shall have their usage only until such time as the Union shall request their return. The employer agrees to surrender same immediately, upon demand by the Union.

## ARTICLE XI

(a) The terms of this Agreement shall commence October 1, 1951, and shall expire at 12:00 Midnight, October 4, 1952.

(b) Any alteration that may be desired by either party to this Agreement at the time of expiration must be made in writing not later than sixty (60) days prior to its expiration. In case neither party serves notice for a change in this Agreement, at its expiration, it shall automatically renew itself through October 4, 1953.

## ARTICLE XII

If the adoption of the new Agreement be delayed, then...

## ARTICLE IX

WHEN PERMITTED BY LAW THE FOLLOWING CLAUSES (A), (B) AND (C) SHALL AUTOMATICALLY BECOME EFFECTIVE

(a) When in need of help, the employer must give preference to members in good standing of Local 546.

(b) The Employer agrees to employ and keep in employment only such persons who are members in good standing of said Union. All new employees employed by the employer shall, after the effective date of this agreement, within thirty (30) days, become members of the Union, and shall be required to remain members in good standing as a condition of the continuation of their employment. The employer agrees that, upon written notice from the Union, they will discharge at the Union's request, any person, within a period of fifteen (15) days, who shall not be in good standing.

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(d) No employee shall be discharged without good and sufficient cause; drunkenness, dishonesty, incompetency, incivility or an over supply of help will be sufficient cause for dismissal, or help can be dismissed providing preference be given to Union men in replacing help.

## ARTICLE X

It will be the duty of the employer to prominently display Union shop cards in all establishments wherein Union meat cutters are employed. These cards shall remain the property of the Union, and the employer shall have their usage only until such time as the Union shall request their return. The employer agrees to surrender same immediately, upon demand by the Union.

## ARTICLE XI

(a) The terms of this Agreement shall commence October 1, 1951, and shall expire at 12:00 Midnight, October 4, 1952.

(b) Any alteration that may be desired by either party to this Agreement at the time of expiration must be made in writing not later than sixty (60) days prior to its expiration. In case neither party serves notice for a change in this Agreement, at its expiration, it shall automatically renew itself through October 4, 1953.

## ARTICLE XII

If the adoption of the new Agreement be delayed later than November 4, 1952, it shall be retroactive to October 5, 1952.

## ARTICLE XIII

This Agreement is to be kept posted in the place of employment so that every employee may have equal and easy access to same.

## ARTICLE XIV

Laundry, tools and sharpening of tools to be furnished free of cost by employer.



## ARTICLE XV

The self-service system of merchandising meat under the jurisdiction of the Union as set forth in ARTICLE II will be considered a violation of this Agreement. Frozen poultry may be sold from self-service cases during market hours as provided for in ARTICLE III.

## ARTICLE XVI

.....agree not to negotiate with any but the duly elected officers of Local 546 and further agree not to make a Contract with anyone not affiliated with Local 546.

## ARTICLE XVII

Any member of Local 546 who is in good standing and is in business for himself who may desire to affiliate with the.....  
.....may apply for a withdrawal card, provided the request be accompanied by a similar request from the.....  
.....Withdrawal card may be obtained upon application to the Executive Board of Local 546.

## ARTICLE XVIII

### ARBITRATION CLAUSE

All grievances which cannot be adjusted by Local 546 and employer shall be referred to an Arbitration Board consisting of two (2) members to be named by the Union, two (2) by the affected employer and one (1) to be agreed upon by the four (4) already selected.

No strike, cessation of work, picketing, boycott or lock-out to occur when arbitration has been requested by either party, provided that the dispute has been heard and decided within a thirty (30) day period from submission.

## ARTICLE XIX

Local 546, if requested, will furnish men who will work to the best interest of the employer in every way, just and lawful, who will give honest and diligent service to patrons of the employer's establishment, who will do everything within their power for the uplifting of the meat industry.

## ARTICLE XX

Any regular employee unable to work because of injuries received during the regularly scheduled work-week and whose injuries arose out of or during the course of his employment shall be entitled to a full day's pay for each day lost because of such injuries, but not exceeding four (4) days in any such work week; provided, however, that the employee shall report upon receipt of the injury to the employer's physician whose decision with respect to the length of time required off shall be controlling; provided further, that nothing in this provision shall effect any rights accrued to either party under the State Workmen's Compensation Act, and that the employer shall receive credit for any payment made under this provision should compensation be awarded by the State Commission.

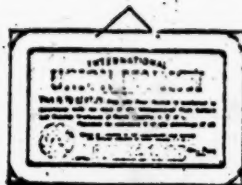
The parties hereto certify that they are empowered and duly authorized to sign this Agreement.

## ARTICLE XXI

Nothing contained in this Agreement is intended to violate any Federal Law, Rule, or Regulation made pursuant thereto. If any part of this Agreement is construed to be in such violation, then that part shall be made null and void and the parties agree that they will immediately begin negotiations to replace said void part with a valid provision.

## ARTICLE XXII

1952-3-4



# AMALGAMATED MEAT CUTTERS AND B. W OF N. A.

*Affiliated with*  
American Federation of Labor  
Illinois Federation of Labor  
Chicago Federation of Labor

R. EDIETT KELLY  
Sec. Treas. Local 546  
100 N. Wells St., Chicago  
Room 1802  
Franklin 2-8835

LOCAL 546

Regular Meetings the 2nd Tuesday Night of each  
month at Meat Cutters Hall, 128 North Wells Street

DOCKET

FILED

MAY 28 1963

AT O'CLOCK  
ELBERT A. WAGNER, JR.  
CLERK

## SELF-SERVICE CONTRACT AMALGAMATED MEAT CUTTERS AND B. W. OF N. A.

LOCAL 546

Articles of agreement governing self-service meat markets in the City  
of Chicago and County of Cook entered into between

hereinafter called the EMPLOYER, and the AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 546 (A. F. of L.) hereinafter sometimes referred to as the UNION, acting as the exclusive collective bargaining agent for all employees covered by this agreement.

### ARTICLE I

#### SCOPE OF CONTRACT

It is agreed that this contract shall govern the hours, wages and other conditions of employment of EMPLOYER'S meat department employees in SELF-SERVICE MEAT MARKETS only within the geographical jurisdiction of LOCAL 546 and that the hours, wages and other conditions of employment of EMPLOYER'S meat department employees in SERVICE MEAT MARKETS are covered by a separate contract. It is further agreed that the EMPLOYER shall have the sole discretion of determining from time to time which system of merchandising, service or self-service, shall be utilized in each of the EMPLOYER'S markets; provided that the Employer shall comply with the wages, hours and other contractual conditions of employment pertaining to the system of merchandising used in that market.

### ARTICLE II

#### JURISDICTION

(a) The EMPLOYER recognizes and agrees that said UNION is and shall be the sole and exclusive collective bargaining agency for and on behalf of all employees in the meat department of said EMPLOYER who process, pack, wrap, handle and sell frozen and fresh meats on EMPLOYER'S premises; and that it will not negotiate with any but the duly elected officers of the UNION nor contract with anyone not affiliated with the UNION.

(b) Processing. The parties agree that in self-service markets the members of the UNION shall perform all cutting, preparing, fabricating, handling and packaging into retail cuts of all fresh fish and rabbits and all fresh or frozen beef, veal, pork, lamb and mutton, said work to be done only on the premises or immediately adjacent thereto.

(c) Sale. The parties further agree that in self-service markets members of the UNION shall have the exclusive jurisdiction over the sale of all fish, poultry, rabbits and meats, whether fresh or frozen, including delicatessen meats but excepting sliced package bacon and package Corned Beef.

[fol. 141]

IN UNITED STATES I  
FOR THE NORTHERN DIS

DEFENDANTS' EX

understood and agreed that if all fresh or frozen beef, veal, lamb, mutton and pork sold by a market are handled and sold on a service basis only, the fact that a market handles and sells, on a self-service basis, delicatessen and other meat products now excepted from the jurisdiction of the UNION under the SERVICE CONTRACT shall not operate to classify such market as a self-service market; but such semi-self-service market shall nevertheless be considered a service market subject only to the wage scales, hours and other conditions provided in the SERVICE CONTRACT.

In the event of any dispute as to whether a meat market shall be classed as a service market subject to the terms and conditions of the service contract or a self-service market subject to the terms and conditions of this contract, the decision of the UNION shall be binding unless and until said decision has been set aside by any arbitration proceedings had pursuant to the terms of this contract; provided, however, that either party may require that such dispute be submitted to arbitration forthwith.

### ARTICLE III

#### WORKING HOURS — WORKWEEK

(a) Basic Work Day. Eight (8) hours shall constitute the basic work day. Work shall begin at 9:00 A.M. and shall cease at 6:00 P.M. One (1) hour shall be allowed for lunch in all markets whether manned by one or more employees, said lunch hour to begin no earlier than 11:00 A.M. and to end no later than 2:00 P.M. There shall be no clean-up time after 6:00 P.M., except clean-up may be performed after 6:00 P. M. provided that overtime is paid for all work performed after 6:00 P.M.

(b) Basic Workweek. Five (5) basic work days (40 hours) shall constitute the basic workweek which shall be worked—Monday through Saturday, inclusive. One full day off within the week of Monday through Saturday, inclusive, shall be allowed each employee in each shop. The day off shall be at the EMPLOYER'S discretion except that it may be rotated or changed in accordance with the mutual agreement of the EMPLOYER and his employees.

(c) Rest Period. Each employee shall have two (2) rest periods of ten (10) minutes each to be taken daily at the following times:

Cutting Room Employees: 10:00 A.M. to 10:10 A.M. and 3:00 P.M. to 3:10 P.M. Packaging Room Employees including Employees Servicing the Self-Service Counters: 10:10 A.M. to 10:20 A. M. and 3:10 P.M. to 3:20 P.M.

(d) Sixth Day Guarantee. Any employee called to work on the sixth day in any regular workweek shall be guaranteed four (4) hours ( $\frac{1}{2}$  day of work). Reporting time on the sixth day shall be either 9:00 A.M. or 2:00 P.M. It is agreed that the Head Meat Cutters and Journeymen will be given preference over apprentices for work on the sixth (6th) full or half day during a regular workweek, and on the fifth (5th) full or half day during a holiday week.

(e) Inventory. Employees shall not take inventory outside of regular working hours.

### ARTICLE IV

#### MARKET OPERATING HOURS

Market operating hours shall be 9:00 A.M. to 6:00 P.M. Monday through Saturday, inclusive. No customer shall be served who comes into the market before or after the hours set forth above. In those stores in which the grocery departments remain open after 6:00 P.M. only those products excepted under ARTICLE 2 (c) (sliced package baco, sliced package Canadian bacon, canned and glassed meats of all kinds and all meats not for human consumption) may be sold after 6:00 P.M. The parties agree that in the event the market operating hours of service markets are extended at any time during the term hereof the extension shall likewise apply to the market operating hours of self-service markets.

### ARTICLE V

#### WAGES

(a) Wage Scale. Not less than the following wages shall be paid during the term of this contract:

	Minimum Weekly Wage for Basic Workweek	Extra Day Rates Full Day Half Day
Head Meat Cutters .....	\$101.00	\$21.00 \$10.75

contract, the decision of the UNION shall be binding unless and until said decision has been set aside by any arbitration proceedings had pursuant to the terms of this contract; provided, however, that either party may require that such dispute be submitted to arbitration forthwith.

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### ARTICLE V

#### WAGES

(a) Wage Scale. Not less than the following wages shall be paid during the term of this contract:

	Minimum Weekly Wage for Basic Workweek	Extra Day Rates Full Day	Half Day
Head Meat Cutters .....	\$101.00	\$21.00	\$10.75
Journeymen .....	94.50	19.50	10.00
Apprentices			
First Year .....	64.00	13.00	7.00
Second Year .....	70.00	14.25	7.50
Third Year .....	76.00	15.50	8.25

(b) Extra Men. Extra men shall be paid the rates set out above for journeymen.

(c) Extra Day Rates. The extra day rates set out above shall be paid whenever an employee works the sixth day of a regular workweek or the fifth day during a holiday week.

### ARTICLE VI

#### HOLIDAYS

(a) There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day. When and if Victory Day is declared a National Legal Holiday it shall be made a part of this ARTICLE.



(b) Employees who are absent the regularly scheduled work day before, or after a holiday, or both, except in the case of proven illness or unavoidable absence shall not receive holiday pay, but shall be paid only for the hours actually worked.

(c) During a holiday week the employee shall receive pay for a basic workweek (5 days—40 hours) for four days (32 hours) of work and pay for six full days (48 hours) for five days (40 hours) of work.

## ARTICLE VII

### OVER TIME

Overtime after eight (8) hours in any one day may be worked at the following rates:

Head Meat Cutters .....	\$3.79 per hour
Journeyman .....	3.54 per hour
Apprentices	
1st Year .....	2.40 per hour
2nd Year .....	2.63 per hour
3rd Year .....	2.85 per hour

## ARTICLE VIII

### CLASSIFICATION OF EMPLOYEES

(a) The term "Head Meat Cutter" shall be construed to mean a journeyman meat cutter who is responsible for the efficient management of the market.

(b) The EMPLOYER is permitted to employ apprentices at a ratio of not exceeding two for each five journeymen employed in EMPLOYER'S self-service markets within the jurisdiction of the UNION. A quarterly report covering the employment of apprentices shall be furnished the UNION. EMPLOYER agrees to rotate all apprentices in EMPLOYER'S self-service markets so as to give them sufficient well-rounded experience to qualify them as journeymen meat cutters after three years' service. After three years' service, they shall be classified as journeymen and paid the journeyman rate of pay.

(c) Apprentices shall not work part time or as extra men on Saturdays, or the day preceding holidays. Apprentices must be at least sixteen (16) years of age.

## ARTICLE IX

### VACATIONS

(a) Any employee who has given service for the course of one (1) year shall be entitled to one (1) week's vacation with pay. After two (2) years of service he shall be entitled to two (2) weeks' vacation with pay. A man relieving a Head Meat Cutter on vacation shall receive the Contract rate of pay for Head Meat Cutters.

(b) Whenever a holiday listed in ARTICLE 6 falls within an employee's vacation period, the employee shall receive an extra day's pay or a subsequent day off, at the EMPLOYER'S option.

## ARTICLE X

LOCAL 546, if requested, will furnish men, insofar as they are available, who will work to the best interest of the EMPLOYER in every way, just and lawful, who will give honest and diligent service to patrons of the EMPLOYER'S establishment, who will do everything within their power for the uplifting of the meat industry.

## ARTICLE XI

When permitted by law, the provisions of the ARTICLE shall automatically become effective.

(a) When in need of help, the EMPLOYER must give preference to members in good standing in the UNION.

(b) The EMPLOYER agrees to employ and keep in employment only such persons who, thirty (30) days after the effective date hereof or thirty



Journeymen .....	
Apprentices	
1st Year .....	2.40 per hour
2nd Year .....	2.63 per hour
3rd Year .....	2.85 per hour

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## ARTICLE XI

When permitted by law, the provisions of the ARTICLE shall automatically become effective.

(a) When in need of help, the EMPLOYER must give preference to members in good standing in the UNION.

(b) The EMPLOYER agrees to employ and keep in employment only such persons who, thirty (30) days after the effective date hereof or thirty (30) days after commencement of employment whichever is later, are, and thereafter continue to remain members in good standing of said UNION. The EMPLOYER agrees that, upon written notice from the UNION, they will discharge at the UNION'S request any person, within a period of fifteen (15) days, who shall not be in good standing.

(c) Business Representatives have full authority and approval from both parties to this Agreement to immediately remove and require the discharge of any men working below the scale fixed herein.

## ARTICLE XII

### DISMISSALS

No employee shall be discharged without good and sufficient cause. Drunkenness, dishonesty, incompetency, incivility or an over supply of help will be sufficient cause for dismissal. No man can be dismissed providing preference be given to UNION men in replacing help.

[fol. 143]

## ARTICLE XIII

### TOOLS; PACKAGING EQUIPMENT RESTRICTION

(a) Laundry, tools and sharpening of tools shall be furnished free of cost by EMPLOYER.

(b) The kinds of saws, power saws, conveyors, sealing irons, sealing plates, staplers, recording and printing sealers for weighing, vacuum sealing equipment and other tools which the EMPLOYER may use shall be determined by the EMPLOYER; provided, however, that the EMPLOYER shall neither install nor use any automatic packaging equipment not now being used by the EMPLOYER, other than an improvement on equipment presently being used and also excepting vacuum sealing equipment, without first securing the UNION'S approval.

## ARTICLE XIV

### DISPLAY OF CONTRACT AND UNION SHOP CARDS

This Agreement is to be kept posted in the place of employment so that every employee may have equal and easy access to same.

It will be the duty of the EMPLOYER to prominently display UNION shop cards in all establishments wherein UNION meat cutters are employed. These cards shall remain the property of the UNION, and the EMPLOYER shall have their usage only until such time as the UNION shall request their return. The EMPLOYER agrees to surrender same immediately upon demand by the UNION.

## ARTICLE XV

### ARBITRATION

Should any dispute or grievance arise between the EMPLOYER and the UNION or between the EMPLOYER and its employees, concerning the application and/or construction of this contract, the parties agree that such matter shall be adjusted, if possible, by negotiations. In the event the dispute or grievance cannot be composed by negotiations within fifteen (15) days after the inception of the matter in dispute, then it shall be submitted immediately to a Board of Arbitration, consisting of three (3) persons, for final and binding decision. Either party may institute said arbitration proceedings by giving the other party notice thereof in writing, naming one person to act in his behalf on said arbitration board; and the other party shall, within five (5) days after receipt of such written notice, name one person to act in his behalf on said arbitration board. These two so selected shall designate the third member or referee of the Board. In the event these two so selected shall be unable, within fifteen (15) days, to agree upon the third member or referee, then the third member of the Board shall forthwith be designated under the rules and procedures of the Federal Mediation and Conciliation Service. The Board shall hold hearings and render its decision in writing within thirty (30) days with respect to a dispute under ARTICLE 2 (d) and within ninety (90) days with respect to any other dispute. The Board's decision shall be final and binding upon both parties. The decision of any two members of the Board shall be the decision of the Board. If the parties shall agree upon one person to act as Arbitrator, his decision shall be as binding as that of a Board of Arbitration. The compensation and expense, if any, of witnesses and the cost of other evidence shall be borne by the party on whose behalf witnesses are called or the evidence is introduced. Each party shall pay for the compensation and expenses of the arbitrator appointed by it. The compensation and expenses of the third arbitrator and all other costs incurred in conducting the arbitration proceedings shall be borne equally by the parties hereto.

The UNION reserves the right to strike and/or picket the plant of the EMPLOYER in the event the EMPLOYER shall fail or refuse to comply with any decision of a Board of Arbitration within ten days after notice thereof. The EMPLOYER reserves the right to declare a lockout should the UNION fail or refuse to comply with any decision of a Board of Arbitration within ten days after notice thereof.

## ARTICLE XVI

### ABSENCES DUE TO INJURIES

Any regular employee unable to work because of injuries received during the regularly scheduled workweek and whose injuries arose out of or during

## ARTICLE XVIII

## EFFECTIVE DATE AND TERM

(a) The term of the agreement shall begin December 1, 1952 and shall expire at 12:00 midnight, October 2, 1954. It is understood and agreed, however, that under current wage stabilization regulations this contract cannot be made operative until the specific wage rates provided herein (and no lesser wage rates) are approved by the proper wage stabilization authorities. In the event wage stabilization restrictions become inoperative or are modified so as to make specific approval unnecessary, then operations under this contract may begin at any time. The UNION and EMPLOYER agree to cooperate at all times in petitioning the Wage Stabilization Board for approval of the wage rates contained herein and to use their best influence to secure such approval.

(b) Either party may reopen this contract as to wage rates only on October 4, 1953 by giving the other party not less than sixty (60) days prior written notice; provided, however, that during the term of this contract the wage rates for self-service markets shall not exceed the wage rates in service markets by more than \$2.00 per week for apprentices and \$7.00 per week for journeymen and head meat cutters.

(c) If either party reopens this contract as to wage rates on October 4, 1953 and agreement as to such new wage rates, if any, is delayed later than November 4, 1953, then the new wage rates shall be retroactive to October 5, 1953.

## ARTICLE XIX

The UNION agrees that during the term of this agreement it will not enter into a contract with any other employer which grants to such other employer the right to operate self-service markets for lesser wages or longer hours or any other condition of employment or market operation more favorable to such other employer than those contained in this contract except upon the condition that this EMPLOYER shall receive the benefit of any more favorable terms granted to such other employer.

## ARTICLE XX

The parties hereto certify that they are empowered and duly authorized to sign this agreement.

## ARTICLE XXI

Nothing herein contained shall limit the right of the EMPLOYER or of the UNION to make use of such economic rights as such party possesses in event of either a breach of this contract or the reaching of an impasse on any wage reopening; provided, however, that there shall be no strike, picketing or lockout for any cause whatsoever during the period of any arbitration proceeding. An arbitration proceeding shall commence on the day either party demands arbitration and shall end on the day the decision is rendered.

## ARTICLE XXII

This Contract approved and passed by the International Executive Board of the Union at the General Office the 10th day of November, 1952.

EXECUTED AT CHICAGO, ILLINOIS THIS 11th DAY OF NOVEMBER, 1952.

LOCAL 546, Amalgamated Meat Cutters and Butcher Workmen of North America, A. F. of L.

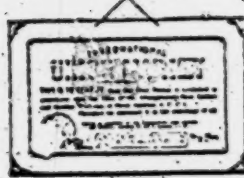
By \_\_\_\_\_ President

By \_\_\_\_\_ Secretary-Treasurer

Employer \_\_\_\_\_

By \_\_\_\_\_

1952-3-4



B. EDGETT KELLY  
Sec. - Trans. Local 546  
130 N. Wells St., Chicago  
Room 1602  
Franklin 2-9930

## AMALGAMATED MEAT CUTTERS AND B. W OF N. A.

*Affiliated with*  
American Federation of Labor  
Illinois Federation of Labor  
Chicago Federation of Labor

LOCAL 546

Regular Meetings the 2nd Tuesday Night of each  
month at Meat Cutters Hall, 138 North Wells Street

### SERVICE CONTRACT

FILED

MAY 28 1963

AT 0'CLOCK  
ELBERT A. WAGNER, JR.  
CLERK

POCKETED

Articles of Agreement Governing Meat Markets in the City of  
Chicago and County of Cook, entered into between.....

hereinafter called the "employer", all meat markets and chain store meat  
markets; all combination Grocery and Meat Markets in Chicago and  
County of Cook; and the AMALGAMATED MEAT CUTTERS AND  
BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 546 (A.F. of L.)  
acting as the Collective Bargaining Agent for its members. This Contract  
approved and passed by the International Executive Board at the  
General Office the nineteenth day of October, 1952.

#### ARTICLE I

FOR AND IN CONSIDERATION of the mutual promises of the  
parties hereto and for other good and valuable considerations, receipt  
of which is hereby acknowledged, this Agreement is entered into.

#### ARTICLE II

The Employer recognizes and agrees that said Union is and shall  
be the sole and exclusive collective bargaining agency for and on behalf  
of all meat cutters and butcher workmen employed by said employer on  
their premises; including those workers processing, packing, wrapping  
and selling frozen fresh meats.

The parties agree that all fish, poultry, rabbits, meats and its kindred  
products, fresh or frozen, except

- sliced boiled, baked or barbecued ham;
- sliced packaged bacon;
- sliced packaged dried beef;
- sliced packaged Canadian bacon;
- all smoked sausage;
- canned and glassed meats of all kinds;
- all ready to eat prepared meats, poultry and fish;
- frozen packaged fish;
- and all meats not for human consumption,

will be sold, cut, prepared and fabricated by meat department em-  
ployees, and said cutting, preparing, fabricating and packaging of above  
adjacent thereto.

#### ARTICLE III WORKING HOURS

(a) Eight and one-half (8½) hours shall constitute the basic work  
day, Monday through Saturday; work to begin at 8:30 A.M. and stop at  
6:00 P.M., allowing one (1) hour for lunch, said hour to begin no earlier  
than 11:00 A.M. nor end later than 2:00 P.M. This to apply to all

[fol. 146]

IN UNITED STATES I  
FOR THE NORTHERN DIS

DEPENDANTS IX



FILED

MAY 28 1963

AT 10 O'CLOCK  
ELBERT A. WAGNER, JR.  
Clerk

DOCKETED

**Articles of Agreement Governing Meat Markets in the City of Chicago and County of Cook, entered into between.....**

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**ARTICLE II**

The Employer recognizes and agrees that said Union is and shall be the sole and exclusive collective bargaining agency for and on behalf of all meat cutters and butcher workmen employed by said employer on their premises; including those workers processing, packing, wrapping and selling frozen fresh meats.

The parties agree that all fish, poultry, rabbits, meats and its kindred products, fresh or frozen, except

sliced boiled, baked or barbecued ham;  
sliced packaged bacon;  
sliced packaged dried beef;  
sliced packaged Canadian bacon;  
all smoked sausage;  
canned and glassed meats of all kinds;  
all ready to eat prepared meats, poultry and fish;  
frozen packaged fish;  
and all meats not for human consumption,

will be sold, cut, prepared and fabricated by meat department employees into retail cuts will be done on the premises or immediately adjacent thereto.

**ARTICLE III**

**WORKING HOURS**

(a) Eight and one-half (8½) hours shall constitute the basic work day, Monday through Saturday; work to begin at 8:30 A.M. and stop at 6:00 P.M., allowing one (1) hour for lunch, said hour to begin no earlier than 11:00 A.M., nor end later than 2:00 P.M. This to apply to all markets whether manned by one or more than one employee. Employees must be dressed and ready for work at 8:30 A.M. Monday through Saturday.

(b) Five (5) days shall constitute the basic work week, to be worked Monday through Saturday, with one (1) full day off within each shop, for each employee at the employers discretion. The day off shall be rotated or in accordance with the mutual agreement of the employer and his employees.

(c) Market operating hours shall be 9:00 A.M. to 6:00 P.M., MONDAY THROUGH SATURDAY, inclusive.

(d) Any employee called to work on the sixth (6th) day in any regular work week, shall be guaranteed Four Hours and Fifteen Minutes work. Reporting time on the sixth (6th) day shall be either 8:30 A.M. or 1:45 P.M.

[fol. 146]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANTS' EXHIBIT 40M



(c) Effective October 4, 1953, the work week shall be reduced to 40 hours to be worked in five days. The parties agree to meet at least 30 days prior to October 4, 1953, to agree upon a uniform scheduling of the work week. In no event shall the scheduling of such work week permit staggering hours within the day.

#### ARTICLE IV

(a) There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day. When and if Victory Day is declared a National Legal Holiday it shall be made a part of this ARTICLE.

(b) Employees who are absent ~~the~~ regularly scheduled work day before, or after, a holiday, or both, except in the case of proven illness or unavoidable absence shall not receive holiday pay, but shall be paid only for the hours actually worked.

(c) During a holiday week the employee shall receive a full week's pay for four (4) days of work; if an employee works the fifth (5th) day during a holiday week, or the sixth (6th) day during a regular work week he shall be paid at the following rates:

	FULL DAY	HALF DAY
HEAD MEAT CUTTERS.....	\$19.35	\$10.05
JOURNEYMEN .....	17.85	9.55
1st YEAR APPRENTICES.....	12.60	6.80
2nd YEAR APPRENTICES.....	13.60	7.30
3rd YEAR APPRENTICES.....	14.85	8.05

(d) It is agreed that the Head Meat Cutters and Journeymen will be given preference over Apprentices for work on the sixth (6th) full or half day during a regular work week, and on the fifth (5th) full or half day during a holiday week.

#### ARTICLE V

##### HEAD MEAT CUTTER AND JOURNEYMAN'S CLAUSE

(a) The term "Head Meat Cutter" shall be construed to mean a journeyman meat cutter who is responsible for the efficient management of the market and shall receive not less than Ninety-four Dollars (\$94.00) weekly.

(b) All Journeymen meat cutters shall receive not less than Eighty-seven Dollars and Fifty Cents (\$87.50) weekly as a minimum wage. Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages or working conditions.

(c) Extra men to receive not less than Seventeen Dollars and Eighty-five Cents (\$17.85) per day, unless they work the full week, when they are to receive the regular salary of the permanent meat cutters whose places they are filling.

(d) The meat cutters employed in low volume shops must receive the Journeyman scale of wages provided for in this Agreement. It is distinctly understood that there shall be no concession for the said low volume shops.

#### ARTICLE VI

(a) Any employee who has given service for the course of one (1) year shall be entitled to one (1) week's vacation with pay. After two years of service he shall be entitled to two (2) weeks' vacation with pay. A man relieving a Head Meat Cutter on vacation shall receive the Contract rate of pay for Head Meat Cutters. In case of dispute, the matter shall be referred to arbitration, as provided for in ARTICLE XVIII.

(b) Whenever a holiday as listed in ARTICLE IV falls within an employee's vacation period, the employee shall receive an extra day's pay or a subsequent day off, at the employers option.

HEAD MEAT CUTTERS.....	\$10.35	\$10.05
JOURNEYMEN .....	17.85	9.55
1st YEAR APPRENTICES.....	12.60	6.80
2nd YEAR APPRENTICES.....	13.60	7.30
3rd YEAR APPRENTICES.....	14.85	8.05

(d) It is agreed that the Head Meat Cutters and Journeymen will be given preference over Apprentices for work on the sixth (6th) full or half day during a regular work week, and on the fifth (5th) full or half day during a holiday week.

## ARTICLE V

### HEAD MEAT CUTTER AND JOURNEYMAN'S CLAUSE

(a) The term "Head Meat Cutter" shall be construed to mean a journeyman-meat cutter who is responsible for the efficient management of the market and shall receive not less than Ninety-four Dollars (\$94.00) weekly.

(b) All Journeymen meat cutters shall receive not less than Eighty-seven Dollars and Fifty Cents (\$87.50) weekly as a minimum wage. Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages or working conditions.

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(b) Whenever a holiday as listed in ARTICLE IV falls within an employee's vacation period, the employee shall receive an extra day's pay or a subsequent day off, at the employers option.

## ARTICLE VII

(a) It is expressly understood that no customer shall be served who comes into the market before or after the hours set forth in ARTICLE III, that all customers in the market at the closing hour shall be served; that all meats will be properly taken care of and the market placed in a sanitary condition. Such work not to exceed fifteen minutes and not to be construed as overtime.

(b) Such clean-up time shall not be utilized to prepare for the following days business and shall not be accumulative from day to day.

(c) Overtime after eight and one-half (8½) hours in any one day may be worked at the following rates:

HEAD MEAT CUTTERS.....	\$3.32 per hour
JOURNEYMEN .....	3.09 per hour

## APPRENTICES

FIRST YEAR..... 2.19 per hour  
SECOND YEAR ..... 2.40 per hour  
THIRD YEAR ..... 2.61 per hour

(c) Employees shall not take inventory outside of regular working hours.

## ARTICLE VIII

### APPRENTICE CLAUSE

(a) Employers are permitted to employ Apprentices not to exceed two (2) for each five (5) journeymen employed provided that a quarterly report shall be furnished to the local Union.

Weekly wage scale of Apprentices to be as follows:

FIRST YEAR .....\$62.00  
SECOND YEAR ..... 68.00  
THIRD YEAR ..... 74.00

(b) After serving three (3) years of apprenticeship they shall be classified as journeymen meat cutters and shall receive the journeyman rate of pay.

(c) Apprentices shall not work part time or as extra men on Saturdays, or the day preceding holidays. Apprentices must be at least sixteen (16) years of age.

## ARTICLE IX

WHEN PERMITTED BY LAW THE FOLLOWING CLAUSES (A), (B) AND (C) SHALL AUTOMATICALLY BECOME EFFECTIVE

(a) When in need of help, the employer must give preference to members in good standing of Local 546.

(b) The Employer agrees to employ and keep in employment only such persons who are members in good standing of said Union. All new employees employed by the employer shall, after the effective date of this agreement, within thirty (30) days, become members of the Union, and shall be required to remain members in good standing as a condition of the continuation of their employment. The employer agrees that, upon written notice from the Union, they will discharge at the Union's request, any person, within a period of fifteen (15) days, who shall not be in good standing.

(c) Business Representatives have full authority and approval from both parties to this Agreement to immediately remove and require the discharge of any men working below the scale fixed herein.

(d) No employee shall be discharged without good and sufficient cause; drunkenness, dishonesty, incompetency, incivility or an over supply of help will be sufficient cause for dismissal, or help can be dismissed providing preference be given to Union men in replacing help.

## ARTICLE X

It will be the duty of the employer to prominently display Union shop cards in all establishments wherein Union meat cutters are employed. These cards shall remain the property of the Union, and the employer shall have their usage only until such time as the Union shall request their return. The employer agrees to surrender same immediately, upon demand by the Union.

## ARTICLE XI

(a) The terms of this Agreement shall commence October 5, 1952, and shall expire at 12:00 Midnight, October 2, 1954.

(b) Either party may, upon 60 days' written notice prior to October 4, 1953, open this agreement effective October 4, 1953 for the negoti-

(b) After serving three (3) years of apprenticeship they shall be classified as journeymen meat cutters and shall receive the journeyman rate of pay.

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#### ARTICLE XI

(a) The terms of this Agreement shall commence October 5, 1952, and shall expire at 12:00 Midnight, October 2, 1954.

(b) Either party may, upon 60 days' written notice prior to October 4, 1953, open this agreement effective October 4, 1953 for the negotiation of such wage rates only as they appear in this Agreement.

(c) Any alteration that may be desired by either party to this Agreement at the time of expiration must be made in writing not later than sixty (60) days prior to its expiration. In case neither party serves notice for a change in this Agreement, at its expiration, it shall automatically renew itself through October 1, 1955.

#### ARTICLE XII

If the adoption of the new Agreement be delayed later than November 2, 1954, it shall be retroactive to October 3, 1954.

#### ARTICLE XIII

This Agreement is to be kept posted in the place of employment so that every employee may have equal and easy access to same.



#### ARTICLE XIV

Laundry, tools and sharpening of tools to be furnished free of cost by employer.

#### ARTICLE XV

The self-service system of merchandising meat under the jurisdiction of the Union as set forth in ARTICLE II will be considered a violation of this Agreement. Frozen poultry may be sold from self-service cases during market hours as provided for in ARTICLE III.

#### ARTICLE XVI

.....agree not to negotiate with any but the duly elected officers of Local 546 and further agree not to make a Contract with anyone not affiliated with Local 546.

#### ARTICLE XVII

Any member of Local 546 who is in good standing and is in business for himself who may desire to affiliate with the.....  
.....may apply for a withdrawal card, provided the request be accompanied by a similar request from the.....  
.....Withdrawal card may be obtained upon application to the Executive Board of Local 546.

#### ARTICLE XVIII

##### ARBITRATION CLAUSE

All grievances which cannot be adjusted by Local 546 and employer shall be referred to an Arbitration Board consisting of two (2) members to be named by the Union, two (2) by the affected employer and one (1) to be agreed upon by the four (4) already selected.

No strike, cessation of work, picketing, boycott or lock-out to occur when arbitration has been requested by either party, provided that the dispute has been heard and decided within a thirty (30) day period from submission.

#### ARTICLE XIX

Local 546, if requested, will furnish men who will work to the best interest of the employer in every way, just and lawful, who will give honest and diligent service to patrons of the employer's establishment, who will do everything within their power for the uplifting of the meat industry.

#### ARTICLE XX

Any regular employee unable to work because of injuries received during the regularly scheduled work-week and whose injuries arose out of or during the course of his employment shall be entitled to a full day's pay for each day lost because of such injuries, but not exceeding four (4) days in any such work week; provided, however, that the employee shall report upon receipt of the injury to the employer's physician whose decision with respect to the length of time required off shall be controlling; provided further, that nothing in this provision shall affect any rights accrued to either party under the State Workmen's Compensation Act, and that the employer shall receive credit for any payment made under this provision should compensation be awarded by the State Commission.

The parties hereto certify that they are empowered and duly authorized to sign this Agreement.

#### ARTICLE XXI

Nothing contained in this Agreement is intended to violate any Federal Law, Rule, or Regulation made pursuant thereto. If any part of this Agreement is construed to be in such violation, then that part shall be made null and void and the parties agree that they will immediately begin negotiations to replace said void part with a valid provision.

#### ARTICLE XXII

The parties agree that during the life of this agreement both parties will meet at reasonable times for the purpose of agreeing to mutually



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The parties hereto certify that they are empowered and duly authorized to sign this Agreement.

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Nothing contained in this Agreement is intended to violate any Federal Law, Rule, or Regulation made pursuant thereto. If any part of this Agreement is construed to be in such violation, then that part shall be made null and void and the parties agree that they will immediately begin negotiations to replace said void part with a valid provision.

## ARTICLE XXII

The parties agree that during the life of this agreement both parties will meet at reasonable times for the purpose of agreeing to mutually satisfactory terms and conditions of employment respecting self service markets.

SIGNED FOR LOCAL 546, AMALGAMATED MEAT CUTTERS  
BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 546 (A.F. OF L.)

President.....

Sec'y-Treas.....

EMPLOYER:.....

.....

.....

Address.....

Dated at Chicago....., 19.....

[fol. 149]

1933-4

# AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA

LOCAL 546

*Def. ex. 40 N*

R. EMMETT KELLY  
Sec'y-Treas. Local 546  
130 N. Wells St., Chicago  
Room 1606  
Franklin 2-0030

Affiliated with  
American Federation of Labor  
Illinois Federation of Labor  
Chicago Federation of Labor

Regular Meetings the 2nd Tuesday Night of each  
month at Meat Cutters Hall, 130 North Wells Street

## SELF-SERVICE CONTRACT

### AMALGAMATED MEAT CUTTERS AND B. W. OF N. A.

#### Articles of Agreement governing self-service meat markets in the City of Chicago and County of Cook

entered into between.....  
Hereinafter called the EMPLOYER, and the AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 546 (A. F. of L.) hereinafter sometimes referred to as the UNION, acting as the exclusive collective bargaining agent for all employees covered by this agreement.

**ARTICLE 1—SCOPE OF CONTRACT**—It is agreed that this contract shall govern the hours, wages and other conditions of employment of EMPLOYER'S meat department employees in SELF-SERVICE MEAT MARKETS only within the geographical jurisdiction of LOCAL 546 and that the hours, wages and other conditions of employment of EMPLOYER'S meat department employees in SERVICE MEAT MARKETS are covered by a separate contract. It is further agreed that the EMPLOYER shall have the sole discretion of determining from time to time which system of merchandising, service or self-service, shall be utilized in each of the EMPLOYER'S markets; provided that the Employer shall comply with the wages, hours and other contractual conditions of employment pertaining to the system of merchandising used in that market.

**ARTICLE 2—JURISDICTION**—(a) The EMPLOYER recognizes and agrees that said UNION is and shall be the sole and exclusive collective bargaining agency for and on behalf of all employees in the meat department of said EMPLOYER who process, pack, wrap, handle and sell frozen and fresh meats on EMPLOYER'S premises, and that it will not negotiate with any but the duly elected officers of the UNION nor contract with anyone not affiliated with the UNION.

(b) **Processing.** The parties agree that in self-service markets the members of the UNION shall perform all cutting, preparing, fabricating, handling and packaging into retail cuts of all fresh fish and rabbits and all fresh or frozen beef, veal, pork, lamb and mutton, said work to be done only on the premises or immediately adjacent thereto.

(c) **Sale.** The parties further agree that in self-service markets members of the UNION shall have the exclusive jurisdiction over the sale of all fish, poultry, rabbits and meats, whether fresh or frozen, including delicatessen meats, but excepting sliced package bacon, sliced package Canadian bacon, canned and glassed meats of all kinds and all meats not for human consumption; provided further that the market manager shall receive credit for the sale of all products subject to the Union's jurisdiction.

(d) **Definitions of Self-Service, Service and Semi-Self-Service.** A self-service market is one in which fresh or frozen beef, veal, lamb, mutton or pork are available for sale on a pre-package self-service basis. It is agreed that any market which is operated on a partially service and partially self-service basis shall be classified as a self-service market if any fresh or frozen beef, veal, lamb, mutton or pork are made available for sale on a pre-package self-service basis, even though there is also a service counter offering custom cutting for those who prefer it. Such semi-self-service market shall be considered a self-service market subject to the terms and conditions and wage scale contained in this SELF-

If no fresh or frozen beef, veal, lamb, mutton or pork are sold on a self-service basis, then the market is a SERVICE MARKET and shall be operated in accordance with the SERVICE CONTRACT. It is further expressly understood and agreed that if all fresh or frozen beef, veal, lamb, mutton and pork sold by a market are handled and sold on a service basis only, the fact that a market handles and sells, on a self-service basis, delicatessen and other meat products now excepted from the jurisdiction of the UNION under the SERVICE CONTRACT shall not operate to classify such market as a self-service market; but such semi-self-service market shall nevertheless be considered a service market subject only to the wage scales, hours and other conditions provided in the SERVICE CONTRACT.

It is further agreed that whether a meat market shall be classed as a service market subject to the terms

[fol. 150]

IN UNITED STATES DISTRICT  
FOR THE NORTHERN DISTRICT

DEPENDANTS' EXHIBIT

entered into between.....

hereinafter called the EMPLOYER, and the AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 546 (A. F. of L.) hereinafter sometimes referred to as the UNION, acting as the exclusive collective bargaining agent for all employees covered by this agreement.

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**ARTICLE 2—JURISDICTION**—(a) The EMPLOYER recognizes and agrees that said UNION is and shall be the sole and exclusive collective bargaining agency for and on behalf of all employees in the meat department of said EMPLOYER who process, pack, wrap, handle and sell frozen and fresh meats on EMPLOYER'S premises, and that it will not negotiate with any but the duly elected officers of the UNION nor contract with anyone not affiliated with the UNION.

(b) **Processing.** The parties agree that in self-service markets the members of the UNION shall perform all cutting, preparing, fabricating, handling and packaging into retail cuts of all fresh fish and rabbits and all fresh or frozen beef, veal, pork, lamb and mutton, said work to be done only on the premises or immediately adjacent thereto.

(c) **Sale.** The parties further agree that in self-service markets members of the UNION shall have the exclusive jurisdiction over the sale of all fish, poultry, rabbits and meats, whether fresh or frozen, including delicatessen meats, but excepting sliced package bacon, sliced package Canadian bacon, canned and glassed meats of all kinds, and all meats not for human consumption; provided further that the market manager shall receive credit for the sale of all products subject to the Union's jurisdiction.

(d) **Definitions of Self-Service, Service and Semi-Self-Service.** A self-service market is one in which fresh or frozen beef, veal, lamb, mutton or pork are available for sale on a pre-package self-service basis. It is agreed that any market which is operated on a partially service and partially self-service basis shall be classified as a self-service market if any fresh or frozen beef, veal, lamb, mutton or pork are made available for sale on a pre-package self-service basis, even though there is also a service counter offering custom cutting for those who prefer it. Such semi-self-service market shall be considered a self-service market subject to the terms and conditions and wage scale contained in this SELF-

If no fresh or frozen beef, veal, lamb, mutton or pork are sold on a self-service basis, then the market is a SERVICE MARKET and shall be operated in accordance with the SERVICE CONTRACT. It is further expressly understood and agreed that if all fresh or frozen beef, veal, lamb, mutton and pork sold by a market are handled and sold on a service basis only, the fact that a market handles and sells, on a self-service basis, delicatessen and other meat products now excepted from the jurisdiction of the UNION under the SERVICE CONTRACT shall not operate to classify such market as a self-service market; but such semi-self-service market shall nevertheless be considered a service market subject only to the wage scales, hours and other conditions provided in the SERVICE CONTRACT.

In the event of any dispute as to whether a meat market shall be classed as a service market subject to the terms and conditions of the service contract or a self-service market subject to the terms and conditions of this contract, the decision of the UNION shall be binding unless and until said decision has been set aside by any arbitration proceedings had pursuant to the terms of this contract; provided, however, that either party may require that such dispute be submitted to arbitration forthwith.

**ARTICLE 3—WORKING HOURS—WORKWEEK**—(a) **Basic Work Day.** Eight (8) hours shall constitute the basic work day. Work shall begin at 9:00 A.M. and shall cease at 6:00 P.M. One (1) hour shall be allowed for lunch in all markets whether manned by one or more employees, said lunch hour to begin no earlier than 11:00 A.M. and to end no later than 2:00 P.M. There shall be no clean-up time after 6:00 P.M., except clean-up may be performed after 6:00 P.M. provided that overtime is paid for all work performed after 6:00 P.M.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEPENDANTS' EXHIBIT 40N

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(b) **Basic Workweek.** Five (5) basic work days (40 hours) shall constitute the basic workweek which shall be worked—Monday through Saturday, inclusive. One full day off within the week of Monday through Saturday, inclusive, shall be allowed each employee in each shop. The day off shall be at the EMPLOYER'S discretion except that it may be rotated or changed in accordance with the mutual agreement of the EMPLOYER and his employees.

(c) **Rest Period.** Each employee shall have two (2) rest periods of ten (10) minutes each to be taken daily at the following times: Cutting Room Employees: 10:00 A.M. to 10:10 A.M. and 3:00 P.M. to 3:10 P.M. Packaging Room Employees including Employees Servicing the Self-Service Counters: 10:10 A.M. to 10:20 A.M. and 3:10 P.M. to 3:20 P.M.

(d) **Sixth Day Guarantee.** Any employee called to work on the sixth day in any regular workweek shall be guaranteed four (4) hours (½ day of work). Reporting time on the sixth day shall be either 9:00 A.M. or 2:00 P.M. It is agreed that the Head Meat Cutters and Journeymen will be given preference over apprentices for work on the sixth (6th) full or half day during a regular workweek, and on the fifth (5th) full or half day during a holiday week.

(e) **Inventory.** Employees shall not take inventory outside of regular working hours.

(f) **Overtime** may be worked at overtime rates from 8:30 A.M. to 9:00 A.M. and after 6:00 P.M. at the employer's discretion. Such overtime work to be performed behind locked doors.

**ARTICLE 4—MARKET OPERATING HOURS**—Market operating hours shall be 9:00 A.M. to 6:00 P.M. Monday through Saturday, inclusive. No customer shall be served who comes into the market before or after the hours set forth above. In those stores in which the grocery departments remain open after 6:00 P.M. only those products excepted under ARTICLE 2 (c) (sliced package bacon, sliced package Canadian bacon, canned and glassed meats of all kinds and all meats not for human consumption) may be sold after 6:00 P.M. The parties agree that in the event the market operating hours of service markets are extended at any time during the term hereof the extension shall likewise apply to the market operating hours of self-service markets.

**ARTICLE 5—WAGES**—(a) **Wage Scale.** Not less than the following wages shall be paid during the term of this contract:

	Minimum Weekly Wage for Basic Workweek	Extra Day Rates	
		Full Day	Half Day
Head Meat Cutters .....	\$102.50	\$21.50	\$10.75
Journeymen .....	96.00	20.20	10.10
Apprentices			
First Year .....	65.50	14.10	7.05
Second Year .....	71.50	15.30	7.65
Third Year .....	77.50	16.50	8.25

(b) **Extra Men.** Extra men shall be paid \$20.20 per day.

(c) **Extra Day Rates.** The extra day rates set out above shall be paid whenever an employee works the sixth day of a regular workweek or the fifth day during a holiday week.

**ARTICLE 6—HOLIDAYS**—(a) There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day. When and if Victory Day is declared a National Legal Holiday it shall be made a part of this ARTICLE.

(b) Employees who are absent the regularly scheduled work day before, or after a holiday, or both, except in the case of proven illness or unavoidable absence shall not receive holiday pay, but shall be paid only for the hours actually worked.

(c) During a holiday week the employee shall receive pay for a basic workweek (5 days—40 hours) for four days (32 hours) of work and pay for six full days (48 hours) for five days (40 hours) of work.

**ARTICLE 7—OVERTIME**—Overtime after eight (8) hours in any one day may be worked at the following rates:

Head Meat Cutters .....	\$3.84 per hour
Journeymen .....	3.60 per hour
Apprentices	
1st Year .....	2.46 per hour
2nd Year .....	2.69 per hour
3rd Year .....	2.91 per hour

**ARTICLE 8—CLASSIFICATION OF EMPLOYEES**—(a) The term "Head Meat Cutter" shall be construed to mean a journeyman meat cutter who is responsible for the efficient management of the market.

(b) The EMPLOYER is permitted to employ apprentices at a ratio of not exceeding two for each five journeymen.

discretion. Such overtime work to be performed behind locked doors.

**ARTICLE 4—MARKET OPERATING HOURS**—Market operating hours shall be 9:00 A.M. to 6:00 P.M. Monday through Saturday, inclusive. No customer shall be served who comes into the market before or after the hours set forth above. In those stores in which the grocery departments remain open after 6:00 P.M. only those products excepted under ARTICLE 2 (c) (sliced package bacon, sliced package Canadian bacon, canned and glassed meats of all kinds and all meats not-for human consumption) may be sold after 6:00 P.M. The parties agree that in the event the market operating hours of service markets are extended at any time during the term hereof the extension shall likewise apply to the market operating hours of self-service markets.

**ARTICLE 5—WAGES**—(a) Wage Scale. Not less than the following wages shall be paid during the term of this contract:

	Minimum Weekly Wage for Basic Workweek	Extra Day Rates Full Day	Half Day
Head Meat Cutters .....	\$102.50	\$21.50	\$10.75
Journeyman .....	96.00	20.20	10.10
Apprentices			
First Year .....	65.50	14.10	7.05
Second Year .....	71.50	15.30	7.65
Third Year .....	77.50	16.50	8.25

(b) Extra Men. Extra men shall be paid \$20.20 per day.

(c) Extra Day Rates. The extra day rates set out above shall be paid whenever an employee works the sixth day of a regular workweek or the fifth day during a holiday week.

**ARTICLE 6—HOLIDAYS**—(a) There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day. When and if Victory Day is declared a National Legal Holiday it shall be made a part of this ARTICLE.

(b) Employees who are absent the regularly scheduled work day before, or after a holiday, or both, except in the case of proven illness or unavoidable absence shall not receive holiday pay, but shall be paid only for the hours actually worked.

(c) During a holiday week the employee shall receive pay for a basic workweek (5 days—40 hours) for four days (32 hours) of work and pay for six full days (48 hours) for five days (40 hours) of work.

**ARTICLE 7—OVERTIME**—Overtime after eight (8) hours in any one day may be worked at the following rates:

Head Meat Cutters .....	\$3.84 per hour
Journeyman .....	3.60 per hour
Apprentices	
1st Year .....	2.46 per hour
2nd Year .....	2.69 per hour
3rd Year .....	2.91 per hour

**ARTICLE 8—CLASSIFICATION OF EMPLOYEES**—(a) The term "Head Meat Cutter" shall be construed to mean a journeyman meat cutter who is responsible for the efficient management of the market.

(b) The EMPLOYER is permitted to employ apprentices at a ratio of not exceeding two for each five journeymen employed in EMPLOYER'S self-service markets within the jurisdiction of the UNION. A quarterly report covering the employment of apprentices shall be furnished the UNION. EMPLOYER agrees to rotate all apprentices in EMPLOYER'S self-service markets so as to give them sufficient well-rounded experience to qualify them as journeymen meat cutters after three years' service. After three years' service, they shall be classified as journeymen and paid the journeyman rate of pay.

(c) Apprentices shall not work part time or as extra men on Saturdays, or the day preceding holidays. Apprentices must be at least sixteen (16) years of age.

**ARTICLE 9—VACATIONS**—(a) Any employee who has given service for the course of one (1) year shall be entitled to one (1) week's vacation with pay. After two (2) years of service he shall be entitled to two (2) weeks' vacation with pay. A man relieving a Head Meat Cutter on vacation shall receive the Contract rate of pay for Head Meat Cutters.

(b) Whenever a holiday listed in ARTICLE 6 falls within an employee's vacation period, the employee shall receive an extra day's pay or a subsequent day off, at the EMPLOYER'S option.



ARTICLE 10—LOCAL 546, if requested, will furnish men, insofar as they are available, who will work to the best interest of the EMPLOYER in every way, just and lawful, who will give honest and diligent service to patrons of the EMPLOYER'S establishment, who will do everything within their power for the uplifting of the meat industry.

ARTICLE 11—When permitted by law, the provisions of the ARTICLE shall automatically become effective.

(a) When in need of help, the EMPLOYER must give preference to members in good standing in the UNION.

(b) The EMPLOYER agrees to employ and keep in employment only such persons who, thirty (30) days after the effective date hereof or thirty (30) days after commencement of employment whichever is later, are, and thereafter continue to remain members in good standing of said UNION. The EMPLOYER agrees that, upon written notice from the UNION, they will discharge at the UNION'S request, any person, within a period of fifteen (15) days, who shall not be in good standing.

(c) Business Representatives have full authority and approval from both parties to this Agreement to immediately remove and require the discharge of any men working below the scale fixed herein.

ARTICLE 12—DISCHARGES—No employee shall be discharged without good and sufficient cause. Drunkenness, dishonesty, incompetency, incivility or an over supply of help will be sufficient cause for dismissal. Help can be dismissed providing preference be given to UNION men in replacing help.

ARTICLE 13—TOOLS; PACKAGING EQUIPMENT RESTRICTION—(a) Laundry, tools and sharpening of tools shall be furnished free of cost by EMPLOYER.

(b) The kinds of saws, power saws, conveyors, sealing irons, sealing plates, staplers, recording and printing scalers for weighing, vacuum sealing equipment and other tools which the EMPLOYER may use shall be determined by the EMPLOYER; provided, however, that the EMPLOYER shall neither install nor use any automatic packaging equipment not now being used by the EMPLOYER, other than an improvement on equipment presently being used and also excepting vacuum sealing equipment, without first securing the UNION'S approval.

ARTICLE 14—DISPLAY OF CONTRACT AND UNION SHOP CARDS—This Agreement is to be kept posted in the place of employment so that every employee may have equal and easy access to same.

It will be the duty of the EMPLOYER to prominently display UNION shop cards in all establishments wherein UNION meat cutters are employed. These cards shall remain the property of the UNION, and the EMPLOYER shall have their usage only until such time as the UNION shall request their return. The EMPLOYER agrees to surrender same immediately upon demand by the UNION.

ARTICLE 15—ARBITRATION—Should any dispute or grievance arise between the EMPLOYER and the UNION or between the EMPLOYER and its employees, concerning the application and/or construction of this contract, the parties agree that such matter shall be adjusted, if possible, by negotiations. In the event the dispute or grievance cannot be composed by negotiations within fifteen (15) days after the inception of the matter in dispute, then it shall be submitted immediately to a Board of Arbitration, consisting of three (3) persons, for final and binding decision. Either party may institute said arbitration proceedings by giving the other party notice thereof in writing, naming one person to act in his behalf on said arbitration board; and the other party shall, within five (5) days after receipt of such written notice, name one person to act in his behalf on said arbitration board. These two so selected shall designate the third member or referee of the Board. In the event these two so selected shall be unable, within fifteen (15) days, to agree upon the third member or referee, then the third member of the Board shall forthwith be designated under the rules and procedures of the Federal Mediation and Conciliation Service. The Board shall hold hearings and render its decision in writing within thirty (30) days with respect to a dispute under ARTICLE 2 (d) and within ninety (90) days with respect to any other dispute. The Board's decision shall be final and binding upon both parties. The decision of any two members of the Board shall be the decision of the Board. If the parties shall agree upon one person to act as Arbitrator, his decision shall be as binding as that of a Board of Arbitration. The compensation and expense, if any, of witnesses and the cost of other evidence shall be borne by the party on whose behalf witnesses are called or the evidence is introduced. Each party shall pay for the compensation and expenses of the arbitrator appointed by it. The compensation and expenses of the third arbitrator and all other costs incurred in conducting the arbitration proceedings shall be borne equally by the parties hereto.

The UNION reserves the right to strike and/or picket the plant of the EMPLOYER in the event the EMPLOYER shall fail or refuse to comply with any decision of a Board of Arbitration within ten days after notice thereof. The EMPLOYER reserves the right to declare a lockout should the UNION fail or refuse to comply with any decision of a Board of Arbitration within ten days after notice thereof.

ARTICLE 16—ABSENCES DUE TO INJURIES—Any regular employee unable to work because of injuries received during the employment shall be paid for the time lost.

(c) Business Representatives have full authority and approval from both parties to this Agreement to immediately remove and require the discharge of any men working below the scale fixed herein.

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**ARTICLE 15—ARBITRATION**—Should any dispute or grievance arise between the EMPLOYER and the UNION or between the EMPLOYER and its employees, concerning the application and/or construction of this contract, the parties agree that such matter shall be adjusted, if possible, by negotiations. In the event the dispute or grievance cannot be composed by negotiations within fifteen (15) days after the inception of the matter in dispute, then it shall be submitted immediately to a Board of Arbitration, consisting of three (3) persons, for final and binding decision. Either party may institute said arbitration proceedings by giving the other party notice thereof in writing, naming one person to act in his behalf on said arbitration board; and the other party shall, within five (5) days after receipt of such written notice, name one person to act in his behalf on said arbitration board. These two so selected shall designate the third member or referee of the Board. In the event these two so selected shall be unable, within fifteen (15) days, to agree upon the third member or referee, then the third member of the Board shall forthwith be designated under the rules and procedures of the Federal Mediation and Conciliation Service. The Board shall hold hearings and render its decision in writing within thirty (30) days with respect to a dispute under ARTICLE 2 (d) and within ninety (90) days with respect to any other dispute. The Board's decision shall be final and binding upon both parties. The decision of any two members of the Board shall be the decision of the Board. If the parties shall agree upon one person to act as Arbitrator, his decision shall be as binding as that of a Board of Arbitration. The compensation and expense, if any, of witnesses and the cost of other evidence shall be borne by the party on whose behalf witnesses are called or the evidence is introduced. Each party shall pay for the compensation and expenses of the arbitrator appointed by it. The compensation and expenses of the third arbitrator and all other costs incurred in conducting the arbitration proceedings shall be borne equally by the parties hereto.

The UNION reserves the right to strike and/or picket the plant of the EMPLOYER in the event the EMPLOYER shall fail or refuse to comply with any decision of a Board of Arbitration within ten days after notice thereof. The EMPLOYER reserves the right to declare a lockout should the UNION fail or refuse to comply with any decision of a Board of Arbitration within ten days after notice thereof.

**ARTICLE 16—ABSENCES DUE TO INJURIES**—Any regular employee unable to work because of injuries received during the regularly scheduled workweek and whose injuries arose out of or during the course of his employment shall be entitled to a full day's pay for each day lost because of such injuries, but not exceeding four (4) days in any such workweek, provided, however, that the employee shall report upon receipt of the injury to the EMPLOYER'S physician whose decision with respect to the length of time required off shall be controlling; provided further, that nothing in this provision shall affect any rights accrued to either party under the State Workmen's Compensation Act, and that the EMPLOYER shall receive credit for any payment made under this provision should compensation be awarded by the State Commission.

**ARTICLE 17**—Nothing contained in this Agreement is intended to violate any Federal Law, Rule, or Regulation made pursuant thereto. If any part of this Agreement is construed by a court or board of competent jurisdiction to be in such violation, then that part shall be made null and void, the remainder of the contract shall continue in full force and the parties will immediately begin negotiations to replace the void part with a valid provision.

**ARTICLE 18—EFFECTIVE DATE AND TERM—**(a) The terms of this agreement shall commence October 5, 1953 and shall expire at 12:00 Midnight October 2, 1954.

(b) Any alteration that may be desired by either party to this Agreement at the time of expiration must be made in writing not later than sixty (60) days prior to its expiration. In case neither party serves notice for a change in this agreement, at its expiration, it shall automatically renew itself through October 1, 1955.

**ARTICLE 19—**The UNION agrees that during the term of this agreement it will not enter into a contract with any other employer which grants to such other employer the right to operate self-service markets for lesser wages or longer hours or any other condition of employment or market operation more favorable to such other employer than those contained in this contract except upon the condition that this EMPLOYER shall receive the benefit of any more favorable terms granted to such other employer.

**ARTICLE 20—**The parties hereto certify that they are empowered and duly authorized to sign this agreement.

**ARTICLE 21—**Nothing herein contained shall limit the right of the EMPLOYER or of the UNION to make use of such economic rights as such party possesses in event of either a breach of this contract or the reaching of an impasse on any wage reopening; provided, however, that there shall be no strike, picketing or lockout for any cause whatsoever during the period of any arbitration proceeding. An arbitration proceeding shall commence on the day either party demands arbitration and shall end on the day the decision is rendered.

**ARTICLE 22—**This Contract approved and passed by the International Executive Board of the Union at the General Office the 22nd day of October, 1953.

EXECUTED AT CHICAGO, ILLINOIS, THIS 11th DAY OF NOVEMBER, 1953.

LOCAL 546, Amalgamated Meat Cutters and Butcher Workmen of North America, A. F. of L.

By.....  
President

By.....  
Secretary-Treasurer

Employer.....

By.....



1953 - 4

# AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA

LOCAL 546

Affiliated with  
American Federation of Labor  
Illinois Federation of Labor  
Chicago Federation of Labor

R. EMMETT KELLY  
Sec'y-Treas. Local 546  
130 N. Wells St., Chicago  
Room 1606  
FRanklin 2-0030

40-0  
Def. no. ex. 400  
Regular Meetings the 2nd Tuesday Night of each  
month at Meat Cutters Hall, 130 North Wells Street

## SERVICE CONTRACT

AMALGAMATED MEAT CUTTERS AND B. W. OF N. A.

Articles of Agreement Governing Meat Markets in the City of Chicago and County of Cook, entered into  
between.....

hereinafter called the "employer", all meat markets and chain store meat markets, all combination Grocery and Meat Markets in Chicago and County of Cook; and the AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 546 (A. F. of L.) acting as the Collective Bargaining Agent for its members. This Contract approved and passed by the International Executive Board at the General Office the twenty-second day of October, 1953.

ARTICLE 1—FOR AND IN CONSIDERATION of the mutual promises of the parties hereto and for other good and valuable considerations, receipt of which is hereby acknowledged, this Agreement is entered into.

ARTICLE 2—The Employer recognizes and agrees that said Union is and shall be the sole and exclusive collective bargaining agency for and on behalf of all meat cutters and butcher workmen employed by said employer on their premises; including those workers processing, packing, wrapping and selling frozen fresh meats.

The parties agree that all fish, poultry, rabbits, meats and its kindred products, fresh or frozen, except

- sliced boiled, baked or barbecued ham;
- sliced packaged bacon;
- sliced packaged dried beef;
- sliced packaged Canadian bacon;
- all smoked sausage;
- canned and glassed meats of all kinds;
- all ready to eat prepared meats, poultry and fish;
- frozen packaged fish;
- and all meats not for human consumption,

will be sold, cut, prepared and fabricated by meat department employees, and said cutting, preparing, fabricating and packaging of above products into retail cuts will be done on the premises or immediately adjacent thereto.

ARTICLE 3—WORKING HOURS—(a) Eight (8) hours shall constitute the basic work day, Monday through Saturday; work to begin at 9:00 A.M. and stop at 6:00 P.M., allowing one (1) hour for lunch, said hour to begin no earlier than 11:00 A.M., nor end later than 2:00 P.M. This to apply to all markets whether manned by one or more than one employee. Employees must be dressed and ready for work at 9:00 A.M. Monday through Saturday.

(b) Five (5) days shall constitute the basic work week, to be worked Monday through Saturday, with one (1) full day off within each shop, for each employee at the employers discretion. The day off shall be rotated or in accordance with the mutual agreement of the employer and his employees.

(c) Market operating hours shall be 9:00 A.M. to 6:00 P.M., MONDAY THROUGH SATURDAY, inclusive.

(d) Any employee called to work on the sixth (6th) day in any regular work week, shall be guaranteed Four Hours

DEFENDANTS' EXHIBIT 400

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF

[fol. 154]

**SERVICE CONTRACT**  
**AMALGAMATED MEAT CUTTERS AND B. W. OF N. A.**

**Articles of Agreement** Governing Meat Markets in the City of Chicago and County of Cook, entered into between.....

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- sliced boiled, baked or barbecued ham;
- sliced packaged bacon;
- sliced packaged dried beef;
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- all smoked sausage;
- canned and glassed meats of all kinds;
- all ready to eat prepared meats, poultry and fish;
- frozen packaged fish;
- and all meats not for human consumption.

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(b) Five (5) days shall constitute the basic work week, to be worked Monday through Saturday, with one (1) full day off within each shop, for each employee at the employers discretion. The day off shall be rotated or in accordance with the mutual agreement of the employer and his employees.

(c) Market operating hours shall be 9:00 A.M. to 6:00 P.M., MONDAY THROUGH SATURDAY, inclusive.

(d) Any employee called to work on the sixth (6th) day in any regular work week, shall be guaranteed Four Hours work. Reporting time on the sixth (6th) day shall be either 9:00 A.M. or 2:00 P.M.

(e) Overtime may be worked at overtime rates from 8:30 A.M. to 9:00 A.M. and after 6:00 P.M. at the employers discretion.

Such overtime work to be performed behind locked doors.

(f) Employees shall not take inventory outside of regular working hours.

**ARTICLE 4—**(a) There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day. When and if Victory Day is declared a National Legal Holiday it shall be made a part of this ARTICLE.

[fol. 154]  
IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
DEFENDANTS' EXHIBIT 400

FILED

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(b) Employees who are absent the regularly scheduled work day before, of after, a holiday, or both, except in the case of proven illness or unavoidable absence shall not receive holiday pay, but shall be paid only for the hours actually worked.

(c) During a holiday week the employee shall receive a full week's pay for four (4) days of work; if an employee works the fifth (5th) day during a holiday week, or the sixth (6th) day during a regular work week he shall be paid at the following rates:

	Full Day	Half Day
Head Meat Cutters.....	\$20.60	\$10.30
Journeymen .....	19.30	9.65
1st Year Apprentices.....	13.90	6.95
2nd Year Apprentices.....	15.10	7.55
3rd Year Apprentices.....	16.30	8.15

(d) It is agreed that the Head Meat Cutters and Journeymen will be given preference over Apprentices for work on the sixth (6th) full or half day during a regular work week, and on the fifth (5th) full or half day during a holiday week.

**ARTICLE 5—HEAD MEAT CUTTER AND JOURNEYMAN'S CLAUSE—**(a) The term "Head Meat Cutter" shall be construed to mean a journeyman meat cutter who is responsible for the efficient management of the market and shall receive not less than Ninety-eight Dollars (\$98.00) weekly.

(b) All Journeymen meat cutters shall receive not less than Ninety-one Dollars and Fifty Cents (\$91.50) weekly as a minimum wage. Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages or working conditions.

(c) Extra men to receive not less than Nineteen Dollars and Thirty Cents (\$19.30) per day, unless they work the full week, when they are to receive the regular salary of the permanent meat cutters whose places they are filling.

(d) The meat cutters employed in low volume shops must receive the Journeyman scale of wages provided for in this Agreement. It is distinctly understood that there shall be no concession for the said low volume shops.

**ARTICLE 6—**(a) Any employee who has given service for the course of one (1) year shall be entitled to one (1) week's vacation with pay. After two years of service he shall be entitled to two (2) weeks' vacation with pay. A man relieving a Head Meat Cutter on vacation shall receive the Contract rate of pay for Head Meat Cutters. In case of dispute, the matter shall be referred to arbitration, as provided for in ARTICLE 8.

(b) Whenever a holiday as listed in ARTICLE 4 falls within an employee's vacation period, the employee shall receive an extra day's pay or a subsequent day off, at the employer's option.

**ARTICLE 7—**(a) It is expressly understood that no customer shall be served who comes into the market before or after hours set forth in ARTICLE 3, that all customers in the market at the closing hour shall be served; that all meats will be properly taken care of and the market placed in a sanitary condition. Such work not to exceed fifteen minutes and not to be construed as overtime.

(b) Such clean-up time shall not be utilized to prepare for the following days' business and shall not be accumulative from day to day.

(c) Overtime after eight (8) hours in any one day may be worked at the following rates:

Head Meat Cutters.....	\$3.68 per hour
Journeymen .....	3.44 per hour
Apprentices	
First Year .....	2.42 per hour
Second Year .....	2.64 per hour
Third Year .....	2.87 per hour

**ARTICLE 8—APPRENTICE CLAUSE—**(a) Employers are permitted to employ Apprentices not to exceed two (2) for each five (5) journeymen employed provided that a quarterly report shall be furnished to the local Union. Weekly wage scale of Apprentices to be as follows:

FIRST YEAR .....	\$64.50
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2nd Year Apprentices.....	15.10	8.15
3rd Year Apprentices.....	16.30	

(d) It is agreed that the Head Meat Cutters and Journeymen will be given preference over Apprentices for work on the sixth (6th) full or half day during a regular work week, and on the fifth (5th) full or half day during a holiday week.

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**ARTICLE 8—APPRENTICE CLAUSE—**(a) Employers are permitted to employ Apprentices not to exceed two (2) for each five (5) journeymen employed provided that a quarterly report shall be furnished to the local Union. Weekly wage scale of Apprentices to be as follows:

FIRST YEAR .....	\$64.50
SECOND YEAR .....	70.50
THIRD YEAR .....	76.50

(b) After serving three (3) years of apprenticeship they shall be classified as journeymen meat cutters and shall receive the journeyman rate of pay.

(c) Apprentices shall not work part time or as extra men on Saturdays, or the day preceding holidays. Apprentices must be at least sixteen (16) years of age.

**ARTICLE 9—WHEN PERMITTED BY LAW THE FOLLOWING CLAUSES (A), (B) AND (C) SHALL AUTOMATICALLY BECOME EFFECTIVE—**(a) When in need of help, the employer must give preference to members in good standing of Local 546.

(b) The Employer agrees to employ and keep in employment only such persons who are members in good standing of said Union. All new employees employed by the employer shall, after the effective date of this agreement, within

thirty (30) days, become members of the Union, and shall be required to remain members in good standing as a condition of the continuation of their employment. The employer agrees that, upon written notice from the Union, they will discharge at the Union's request, any person, within a period of fifteen (15) days, who shall not be in good standing.

(c) Business Representatives have full authority and approval from both parties to this Agreement to immediately remove and require the discharge of any men working below the scale fixed herein.

(d) No employee shall be discharged without good and sufficient cause; drunkenness, dishonesty, incompetency, incivility or an over supply of help will be sufficient cause for dismissal, or help can be dismissed providing preference be given to Union men in replacing help.

ARTICLE 10—It will be the duty of the employer to prominently display Union shop cards in all establishments wherein Union meat cutters are employed. These cards shall remain the property of the Union, and the employer shall have their usage only until such time as the Union shall request their return. The employer agrees to surrender same immediately, upon demand by the Union.

ARTICLE 11—(a) The terms of this Agreement shall commence October 5, 1953, and shall expire at 12:00 Mid-night, October 2, 1954.

(b) Any alteration that may be desired by either party to this Agreement at the time of expiration must be made in writing not later than sixty (60) days prior to its expiration. In case neither party serves notice for a change in this Agreement, at its expiration, it shall automatically renew itself through October 1, 1955.

ARTICLE 12—If the adoption of the new Agreement be delayed later than November 2, 1954, it shall be retro-active to October 3, 1954.

ARTICLE 13—This Agreement is to be kept posted in the place of employment so that every employee may have equal and easy access to same.

ARTICLE 14—Laundry, tools and sharpening of tools to be furnished free of cost by employer.

ARTICLE 15—The self-service system of merchandising meat under the jurisdiction of the Union as set forth in ARTICLE II will be considered a violation of this Agreement. Frozen poultry may be sold from self-service cases during market hours as provided for in ARTICLE 3.

ARTICLE 16—.....agree not to negotiate with any but the duly elected officers of Local 546 and further agree not to make a Contract with anyone not affiliated with Local 546.

ARTICLE 17—Any member of Local 546 who is in good standing and is in business for himself who may desire to affiliate with the.....may apply for a withdrawal card, provided the request be accompanied by a similar request from the.....Withdrawal card may be obtained upon application to the Executive Board of Local 546.

ARTICLE 18—ARBITRATION CLAUSE—All grievances which cannot be adjusted by Local 546 and employer shall be referred to an Arbitration Board consisting of two (2) members to be named by the Union, two (2) by the affected employer and one (1) to be agreed upon by the four (4) already selected.

No strike, cessation of work, picketing, boycott or lock-out to occur when arbitration has been requested by either party, provided that the dispute has been heard and decided within a thirty (30) day period from submission.

ARTICLE 19—Local 546, if requested, will furnish men who will work to the best interest of the employer in every way, just and lawful, who will give honest and diligent service to patrons of the employer's establishment, who will do everything within their power for the uplifting of the meat industry.

ARTICLE 20—Any regular employee unable to work because of injuries received during the regularly scheduled work-week and whose injuries arose out of or during the course of his employment shall be entitled to a full day's pay for each day lost because of such injuries, but not exceeding four (4) days in any such work week; provided, however, that the employee shall report upon receipt of the injury to the employer's physician whose decision with respect to the length of time required off shall be controlling; provided further, that nothing in this provision shall affect any rights accrued to either party under the State Workmen's Compensation Act, and that the employer shall receive credit



have their wage only until such time as the Union shall request them to join the Union, or agree to join immediately, upon demand by the Union.

ARTICLE 11—(a) The terms of this Agreement shall commence October 5, 1953, and shall expire at 12:00 Mid-night, October 2, 1954.

(b) Any alteration that may be desired by either party to this Agreement at the time of expiration must be made in writing not later than sixty (60) days prior to its expiration. In case neither party serves notice for a change in this Agreement, at its expiration, it shall automatically renew itself through October 1, 1955.

ARTICLE 12—If the adoption of the new Agreement be delayed later than November 2, 1954, it shall be retro-active to October 3, 1954.

ARTICLE 13—This Agreement is to be kept posted in the place of employment so that every employee may have equal and easy access to same.

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ARTICLE 15—The self-service system of merchandising meat under the jurisdiction of the Union as set forth in ARTICLE II will be considered a violation of this Agreement. Frozen poultry may be sold from self-service cases during market hours as provided for in ARTICLE 3.

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The parties hereto certify that they are empowered and duly authorized to sign this Agreement.

ARTICLE 21—Nothing contained in this Agreement is intended to violate any Federal Law, Rule, or Regulation made pursuant thereto. If any part of this Agreement is construed to be in such violation, then that part shall be made null and void and the parties agree that they will immediately begin negotiations to replace said void part with a valid provision.

ARTICLE 22—The parties agree that during the life of this agreement both parties will meet at reasonable times for the purpose of agreeing to mutually satisfactory terms and conditions of employment respecting self-service markets.

SIGNED FOR LOCAL 546, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH  
AMERICA, LOCAL 546 (A. F. OF L.)

President.....

Sec'y-Treas.....

EMPLOYER:.....

.....

.....

Address.....

Dated at Chicago....., 19.....



1955-6

# AMALGAMATED MEAT CUTTERS

130 NORTH WELLS STREET • FRANKLIN 2-0030 • CHICAGO 6

AFFILIATED WITH THE  
AMERICAN FEDERATION OF LABOR  
ILLINOIS FEDERATION OF LABOR  
CHICAGO FEDERATION OF LABOR

R. EMMETT KELLY  
SECRETARY-TREASURER



## SELF-SERVICE CONTRACT

*Def. in ex. 40 P*

AMALGAMATED MEAT CUTTERS AND E. W. OF N. A.,  
A. F. OF L.

### Articles of Agreement governing Self-Service Meat Markets in the City of Chicago and County of Cook,

entered into between.....  
hereinafter called the Employer, and the AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF  
NORTH AMERICA, LOCAL 546 (A. F. of L.), hereinafter sometimes referred to as the Union, acting as the exclusive  
collective bargaining agent for all employees covered by this Agreement. This contract approved and passed by the  
International Executive Board at the General Office the tenth day of October, 1955.

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## ARTICLE 1. GENERAL

Section 1. *Scope of Contract.* It is agreed that this Contract shall govern the hours, wages and other conditions of employment of Employer's meat department employees in Self-Service Meat Markets only within the geographical jurisdiction of Local 546 and that the hours, wages and other conditions of employment of Employer's meat department employees in Service Meat Markets are covered by a separate contract. It is further agreed that the Employer

DOCKETED

FILED

MAY 28 1963

AT O'CLOCK  
ELBERT A. WAGNER, JR.  
CLERK

[fol. 158]  
IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
DEPENDANTS' EXHIBIT 40P

shall have the sole discretion of determining from time to time which system of merchandising, service or self-service, shall be utilized in each of the Employer's markets; provided that the Employer shall comply with the wages, hours and other contractual conditions of employment pertaining to the system of merchandising used in that market.

## **Section 2. Definitions.**

(a) *Apprentice*: An apprentice is an employee who is in training to become a Journeyman butcher. Apprentices must be at least sixteen (16) years of age;

(b) *Journeyman*: After serving three (3) years of apprenticeship, an employee shall be classified as a Journeyman meat cutter and shall receive the Journeyman rate of pay.

(c) *Head Meat Cutter*: The term "Head Meat Cutter" means a Journeyman meat cutter who is responsible for the efficient management of the market.

(d) *Self-Service and Service*: A self-service market is one in which fresh or frozen beef, veal, lamb, mutton or pork are available for sale on a pre-package self-service basis. It is agreed that any market which is operated on a partially service and partially self-service basis shall be classified as a self-service market if any fresh or frozen beef, veal, lamb, mutton or pork are made available for sale on a pre-package self-service basis, even though there is also a service counter offering custom cutting for those who prefer it. Such semi-self-service market shall be considered a self-service market subject to the terms and conditions and wage scale contained in this Self-Service Contract.

If no fresh or frozen beef, veal, lamb, mutton or pork are sold on a self-service basis, then the market is a Service market and shall be operated in accordance with the Service Contract. It is further expressly understood and agreed that if all fresh or frozen beef, veal, lamb, mutton and pork sold by a market are handled and sold on a service basis only, the fact that a market handles and sells, on a self-service basis, delicatessen and other meat products now excepted from the jurisdiction of the Union under the Service Contract shall not operate to classify such market as a self-service market; but such semi-self-service market shall nevertheless be considered a service market subject only to the wage scales, hours and other conditions provided in the Service Contract.

In the event of any dispute as to whether a meat market shall be classed as a service market subject to the terms and conditions of the Service Contract or a self-service market subject to the terms and conditions of this Contract, the decision of the Union shall be binding unless and until said decision has been set aside by any arbitration proceedings had pursuant to the terms of this Contract; provided, however, that either party may require that such dispute be submitted to arbitration forthwith.

**Section 3. Notices.** All notices required under this Contract shall be deemed to be properly served if delivered in writing personally or sent by certified mail to the offices of the Union at 130 North Wells Street, Chicago, Illinois, or to the Employer at the address designated below, or to any subsequent address which the Union or the Employer may designate in writing for such purpose. Date of service of a notice served by mail shall be the date on which such notice is post-marked by a post-office of the United States Post Office Department.

**Section 4. Partial Invalidity.** Nothing contained in this Agreement is intended to violate any Federal Law, Rule, or Regulation made pursuant thereto. If any part of this Agreement is construed by a court or board of competent jurisdiction to be in such violation, then that part shall be made null and void, the remainder of the Contract shall continue in full force and the parties will immediately begin negotiations to replace the void part with a valid provision.

**Section 5. Authority of Signing Parties.** The parties hereto certify that they are empowered and duly authorized to sign this Agreement.

## **ARTICLE 2. JURISDICTION**

**Section 1. Recognition.** The Employer recognizes and agrees that said Union is and shall be the sole and exclusive collective bargaining agency for and on behalf of all employees in the meat department of said Employer who process, pack, wrap, handle and sell frozen and fresh meats on Employer's premises, and that it will not negotiate with any but the duly elected officers of the Union nor contract with anyone not affiliated with the Union.

**Section 2. Processing.** The parties agree that in self-service markets the members of the Union shall perform all cutting, preparing, fabricating, handling and packaging into retail cuts of all fresh fish and rabbits and all fresh or frozen beef, veal, pork, lamb and mutton, said work to be done only on the premises or immediately adjacent thereto; provided, however, that frozen fresh poultry, cut-up or whole, and vacuum or comparably tight-wrapped ham slices, shanks and butts may be prepared by the packer, supplier or Employer off the premises.

**Section 3. Sale.** In self-service markets members of the Union shall have the exclusive jurisdiction over the sale of all fish, poultry, rabbits and meats, whether frozen fresh or fresh, and delicatessen meats, except sliced packaged bacon, sliced packaged Canadian bacon, canned and glassed meats of all kinds and all meats not for human consumption. The following meats subject to the Union's jurisdiction over sale may nevertheless be sold from self-service cases



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In the event of any dispute as to whether a meat market shall be classed as a service market subject to the terms and conditions of the Service Contract or a self-service market subject to the terms and conditions of this Contract, the decision of the Union shall be binding unless and until said decision has been set aside by any arbitration proceedings had pursuant to the terms of this Contract; provided, however, that either party may require that such dispute be submitted to arbitration forthwith.

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- (1) All delicatessen meats, including—
  - (a) ready-to-eat prepared meats, poultry and fish,
  - (b) sliced boiled, baked or barbecued ham,
  - (c) sliced packaged dried beef, and
  - (d) smoked sausage;
- (2) Frozen fresh poultry, cut-up or whole; and
- (3) Frozen packaged fish.

## ARTICLE 3. WAGES

**Section 1. Wage Rates—Weekly, Extra Day and Overtime.** Not less than the following wages shall be paid during the term of this Contract:

	MINIMUM WEEKLY WAGE FOR BASIC WORKWEEK	EXTRA DAY RATES FULL DAY	HALF DAY	OVERTIME RATES
Head Meat Cutters .....	\$106.50	\$22.30	\$11.15	\$3.99
Journeyman .....	100.00	21.00	10.50	3.75
Apprentices—				
First Year .....	68.00	14.60	7.30	2.55
Second Year .....	74.00	15.80	7.90	2.78
Third Year .....	80.00	17.00	8.50	3.00

Section 2: *Payment of Extra Day Rates.* The extra day rates set out above shall be paid whenever an employee works the sixth (6th) day of a regular workweek or the fifth (5th) day during a holiday week.

Section 3: *Extra Help.* Extra men shall be paid \$21.00 per day.

#### ARTICLE 4. WORKING HOURS AND OTHER CONDITIONS OF EMPLOYMENT

Section 1. *Basic Workday.* Eight (8) hours shall constitute the basic workday. Work shall begin at 9:00 a.m. and shall cease at 6:00 p.m. One hour shall be allowed for lunch in all markets whether manned by one or more employees, said lunch hour to begin no earlier than 11:00 a.m. and to end no later than 2:00 p.m. There shall be no clean-up time after 6:00 p.m., except clean-up may be performed after 6:00 p.m. provided that overtime is paid for all work performed after 6:00 p.m.

Section 2. *Basic Workweek.* Five (5) basic workdays (40 hours) shall constitute the basic workweek which shall be worked—Monday through Saturday, inclusive. One full day off within the week of Monday through Saturday, inclusive, shall be allowed each employee in each shop. The day off shall be at the Employer's discretion except that it may be rotated or changed in accordance with the mutual agreement of the Employer and his employees.

Section 3. *Sixth Day Guarantee.* Any employee called to work on the sixth (6th) day in any regular workweek shall be guaranteed four (4) hours ( $\frac{1}{2}$  day) of work. Reporting time on the sixth (6th) day shall be either 9:00 a.m. or 2:00 p.m. It is agreed that the Head Meat Cutters and Journeymen shall be given preference over Apprentices for work on the sixth (6th) full or half day during a regular workweek, and on the fifth (5th) full or half day during a holiday week.

Section 4. *Overtime.* Overtime at overtime rates may be worked behind locked doors from 8:30 a.m. to 9:00 a.m., after 6:00 p.m., and after eight (8) hours in any one day, at the Employer's discretion.

Section 5. *Inventory.* Employees shall not take inventory outside of regular working hours.

Section 6. *Restrictions on Apprentices.* Apprentices may be employed at a ratio of not exceeding two (2) for each five (5) Journeymen employed by the Employer within the jurisdiction of the Local. A quarterly report covering the number of Apprentices employed in relationship to the number of Journeymen shall be furnished the Union.

The Employer agrees to rotate all Apprentices in his markets so as to give them sufficient, well-rounded experience to qualify them as Journeymen at the end of the three (3) year apprenticeship period. Apprentices shall not work part time or as extra men on Saturdays or the day preceding holidays.

Section 7. *Tools; Packaging Equipment Restriction.* Laundry, tools and sharpening of tools shall be furnished free of cost by Employer.

The kinds of saws, power saws, conveyors, sealing irons, sealing plates, staplers, recording and printing sealers for weighing, vacuum sealing equipment and other tools which the Employer may use shall be determined by the Employer; provided, however, that the Employer shall neither install nor use any automatic packaging equipment not now being used by the Employer, except vacuum sealing equipment, without first securing the Union's approval; it being understood, however, that the Union has approved the installation and use of semi-automatic sealing equipment.

By semi-automatic sealing equipment is meant sealing equipment in which the first application of packaging material and also the first seal is made manually. The functions performed by such semi-automatic sealing equipment shall not be enlarged or extended without the prior approval of the Union.

Section 8. *Rest Period.* Each employee shall have two (2) rest periods of ten (10) minutes each to be taken daily at the following times: Cutting Room Employees, 10:00 a.m. to 10:10 a.m. and 3:00 p.m. to 3:10 p.m.; Packaging Room Employees including Employees Servicing the Self-Service Counters, 10:10 a.m. to 10:20 a.m. and 3:10 p.m. to 3:20 p.m.

#### ARTICLE 5. MARKET OPERATING HOURS



Section 3. *Extra Help.* Extra men shall be paid \$2.00 per day.

#### ARTICLE 4. WORKING HOURS AND OTHER CONDITIONS OF EMPLOYMENT

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#### ARTICLE 5. MARKET OPERATING HOURS

Market operating hours shall be 9:00 a.m. to 6:00 p.m. Monday through Saturday, inclusive. No customer shall be served who comes into the market before or after the hours set forth above. In those stores in which the grocery departments remain open after 6:00 p.m. only the following products may be sold after 6:00 p.m.:

- (1) Sliced packaged bacon and Canadian bacon, canned and glassed meats of all kinds, and all meats not for human consumption (being those products excepted from the Union's jurisdiction over sale);
- (2) All delicatessen meats;
- (3) Frozen poultry, cut-up or whole; and
- (4) Frozen packaged fish.

The parties agree that in the event the market operating hours of service markets are extended at any time during the term hereof the extension shall likewise apply to the market operating hours of self-service markets.

## ARTICLE 6. HOLIDAYS, VACATIONS AND OTHER COMPENSABLE ABSENCES

**Section 1. Holidays.** There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day. When and if Victory Day is declared a National Legal Holiday, it shall be made a part of this Article.

Employees who are absent the regularly scheduled workday before, or after, a holiday, or both, except in the case of proven illness or unavoidable absence shall not receive holiday pay, but shall be paid only for the hours actually worked.

During a holiday week the employee shall receive pay for a basic workweek (5 days—40 hours) for four (4) days (32 hours) of work and pay for six (6) full days (48 hours) for five (5) days (40 hours) of work.

**Section 2. Vacations.** Any employee who has given service for the course of one year shall be entitled to one week's vacation with pay. After two (2) years of service he shall be entitled to two (2) weeks' vacation with pay. Effective January 1, 1956, all employees having twelve (12) years of continuous full-time service shall be entitled to three (3) weeks of vacation with pay. Unless otherwise mutually agreed upon between Employer and employee, vacation weeks shall be taken consecutively. A man relieving a Head Meat Cutter on vacation shall receive the Contract rate of pay for Head Meat Cutters. In case of dispute the matter shall be referred to arbitration, as provided for in Article 7.

Whenever a holiday listed in Section 1 of this Article falls within an employee's vacation period, the employee shall receive an extra day's pay or a subsequent day off, at the Employer's option.

**Section 3. Absences Due to Injuries.** Any regular employee unable to work because of injuries received during the regularly scheduled workweek and whose injuries arose out of or during the course of his employment shall be entitled to a full day's pay for each day lost because of such injuries, but not exceeding four (4) days in any such workweek, provided, however, that the employee shall report upon receipt of the injury to the Employer's physician whose decision with respect to the length of time required off shall be controlling; provided further, that nothing in this provision shall affect any rights accrued to either party under the State Workmen's Compensation Act, and that the Employer shall receive credit for any payment made under this provision should compensation be awarded by the State Commission.

## ARTICLE 7. UNION-MANAGEMENT RELATIONS

**Section 1. Union Employees.** Local 546, if requested, will furnish men, insofar as they are available, who will work to the best interest of the Employer in every way, just and lawful, who will give honest and diligent service to patrons of the Employer's establishment, and who will do everything within their power for the uplifting of the meat industry.

**Section 2. Union Shop.** The Employer agrees to employ and keep in employment only such persons who, thirty (30) days after the effective date hereof or thirty (30) days after commencement of employment, whichever is later, are, and thereafter continue to remain, members in good standing of said Union. The Employer agrees that, upon written notice from the Union, it will discharge at the Union's request, any person, within a period of fifteen (15) days, who shall not be in good standing.

**Section 3. Union Preference.** When permitted by law, the Employer agrees that when in need of help he will give preference to members in good standing in the Union.

**Section 4. Business Representatives.** Union Business Representatives shall be admitted to the Employer's market premises during the hours meat department employees are working for the purpose of ascertaining whether or not this Agreement is being observed and for collecting dues. Such activities shall be conducted in such a manner as not to interfere with the orderly operation of Employer's business. Business Representatives have full authority and approval from both parties to this Agreement to immediately remove and require the discharge of any men working below the wage scale fixed herein.

**Section 5. Discharge.** No employee shall be discharged without good and sufficient cause. Drunkenness, dishonesty, incompetency, incivility or an over supply of help will be sufficient cause for dismissal. Help can be dismissed providing preference be given to Union men in replacing help.

**Section 6. Display of Contract and Union Shop Cards.** This Agreement is to be kept posted in the place of employment so that every employee may have equal and easy access to same.

During a holiday, the employee shall receive pay for a day's vacation (7 days (49 hours) of work and pay for six (6) full days (42 hours) for five (5) days (35 hours) of work.

**Section 2. Vacations.** Any employee who has given service for the course of one year shall be entitled to one week's vacation with pay. After two (2) years of service he shall be entitled to two (2) weeks' vacation with pay. Effective January 1, 1956, all employees having twelve (12) years of continuous full-time service shall be entitled to three (3) weeks of vacation with pay. Unless otherwise mutually agreed upon between Employer and employee, vacation weeks shall be taken consecutively. A man relieving a Head Meat Cutter on vacation shall receive the Contract rate of pay for Head Meat Cutters. In case of dispute the matter shall be referred to arbitration, as provided for in Article 7.

Whenever a holiday listed in Section 1 of this Article falls within an employee's vacation period, the employee shall receive an extra day's pay, or a subsequent day off, at the Employer's option.

**Section 3. Absences Due to Injuries.** Any regular employee unable to work because of injuries received during the regularly scheduled workweek and whose injuries arose out of or during the course of his employment shall be entitled to a full day's pay for each day lost because of such injuries, but not exceeding four (4) days in any such workweek, provided, however, that the employee shall report upon receipt of the injury to the Employer's physician whose decision with respect to the length of time required off shall be controlling; provided further, that nothing in this provision shall affect any rights accrued to either party under the State Workmen's Compensation Act, and that the Employer shall receive credit for any payment made under this provision should compensation be awarded by the State Commission.

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**Section 6. Display of Contract and Union Shop Cards.** This Agreement is to be kept posted in the place of employment so that every employee may have equal and easy access to same.

It will be the duty of the Employer to prominently display Union shop cards in all establishments wherein Union meat cutters are employed. These cards shall remain the property of the Union, and the Employer shall have their usage only until such time as the Union shall request their return. The Employer agrees to surrender same immediately upon demand by the Union.

**Section 7. Grievances and Arbitration.** Should any dispute or grievance arise between the Employer and the Union or between the Employer and its employees, concerning the application and/or construction of this Contract, the parties agree that such matter shall be adjusted, if possible, by negotiations. In the event the dispute or grievance cannot be composed by negotiations within fifteen (15) days after the inception of the matter in dispute, then it shall be submitted immediately to a Board of Arbitration, consisting of three (3) persons, for final and binding decision. Either party may institute said arbitration proceedings by giving the other party notice thereof in writing, naming one per-



son to act in his behalf on said Arbitration Board; and the other party shall, within five (5) days after receipt of such written notice, name one person to act in his behalf on said Arbitration Board. These two (2) so selected shall designate the third (3rd) member or referee of the Board. In the event these two (2) so selected shall be unable, within fifteen (15) days, to agree upon the third (3rd) member or referee, then the third (3rd) member of the Board shall forthwith be designated under the rules and procedures of the Federal Mediation and Conciliation Service. The Board shall hold hearings and render its decision in writing within thirty (30) days with respect to a dispute under Article 1 (d) and within ninety (90) days with respect to any other dispute. The Board's decision shall be final and binding upon both parties. The decision of any two (2) members of the Board shall be the decision of the Board. If the parties shall agree upon one person to act as Arbitrator, his decision shall be as binding as that of a Board of Arbitration. The compensation and expense, if any, of witnesses and the cost of other evidence shall be borne by the party on whose behalf witnesses are called or the evidence is introduced. Each party shall pay for the compensation and expenses of the Arbitrator appointed by it. The compensation and expenses of the third (3rd) Arbitrator and all other costs incurred in conducting the arbitration proceedings shall be borne equally by the parties hereto.

The Union reserves the right to strike and/or picket the plant of the Employer in the event the Employer shall fail or refuse to comply with any decision of a Board of Arbitration within ten (10) days after notice thereof. The Employer reserves the right to declare a lock-out should the Union fail or refuse to comply with any decision of a Board of Arbitration within ten (10) days after notice thereof.

Grievances of any nature must be made within forty-five (45) calendar days after the cause giving rise to the grievance becomes evident; and wage claims shall not be valid and collectible for a period earlier than ninety (90) days prior to the date of filing the grievance or the date the grievance arose, whichever date is most recent.

**Section 8. Economic Rights.** Nothing herein contained shall limit the right of the Employer or of the Union to make use of such economic rights as such party possesses in event of either a breach of this Contract or the reaching of an impasse on any wage reopening; provided, however, that there shall be no strike, picketing or lock-out for any cause whatsoever during the period of any arbitration proceeding. An arbitration proceeding shall commence on the day either party demands arbitration and shall end on the day the decision is rendered.

**Section 9. Concessions to Other Employers.** The Union agrees that during the term of this Agreement it will not enter into a contract with any other employer which grants to such other employer the right to operate self-service markets for lesser wages or longer hours or any other condition of employment or market operation more favorable to such other employer than those contained in this Contract except upon the condition that this Employer shall receive the benefit of any more favorable terms granted to such other employer.

### ARTICLE 8. TERM

**Section 1. Initial Term.** This Agreement shall become effective at 12:01 a.m., October 2, 1955, and shall expire at 12:00 midnight, October 6, 1956.

**Section 2. Renewal Term.** If either party wishes to modify this Agreement at its expiration, it shall serve notice in writing of such request upon the other party not less than sixty (60) days prior to the expiration date. In the absence of the service of such notice, this Contract shall automatically renew itself for a period of one year and from year to year thereafter, it being further agreed that the Contract expiration date shall be the first Saturday in October of each year.

**Section 3. Retroactivity.** This Contract shall remain in full force and effect until a new agreement is negotiated, but not beyond an additional sixty (60) days beyond the Contract expiration date. Any increases in wages set out in Article 3 resulting from the negotiations following the Contract expiration date shall be retroactive to the date of expiration, but not exceeding ninety (90) calendar days, whichever period shall be shorter. There shall be no retroactivity with respect to other contract changes, such as changes in working hours or premium or overtime pay.

EXECUTED AT CHICAGO, ILLINOIS, THIS.....DAY OF OCTOBER, 1955.

LOCAL 546, AMALGAMATED MEAT CUTTERS AND  
BUTCHER WORKMEN OF NORTH AMERICA, A.F. of L.

By.....  
President

By.....

[fol. 162]

If the parties shall agree upon one person to act as arbitrator, the cost of Arbitration. The compensation and expense, if any, of witnesses and the cost of other evidence shall be borne by the party on whose behalf witnesses are called or the evidence is introduced. Each party shall pay for the compensation and expenses of the Arbitrator appointed by it. The compensation and expenses of the third (3rd) Arbitrator and all other costs incurred in conducting the arbitration proceedings shall be borne equally by the parties hereto.

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LOCAL 546, AMALGAMATED MEAT CUTTERS AND  
BUTCHER WORKMEN OF NORTH AMERICA, A. F. of L.

By.....  
President

By.....  
Secretary-Treasurer

Employer.....

By.....

Employer's Address.....

.....

.....

[fol: 162]



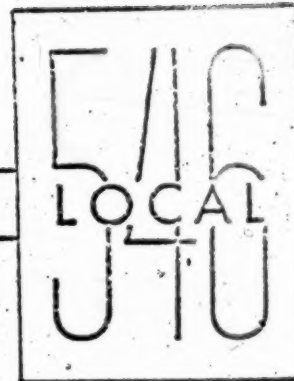
1955-6

# AMALGAMATED MEAT CUTTERS

130 NORTH WELLS STREET • FRANKLIN 2-0030 • CHICAGO 6

AFFILIATED WITH THE:  
AMERICAN FEDERATION OF LABOR  
ILLINOIS FEDERATION OF LABOR  
CHICAGO FEDERATION OF LABOR

R. EMMETT KELLY  
SECRETARY-TREASURER



## SERVICE CONTRACT

AMALGAMATED MEAT CUTTERS AND B. W. OF N. A.,  
A. F. OF L.

*Def. in ex. 409*

**Articles of Agreement** governing Service Meat Markets in the City of Chicago and County of Cook,  
entered into between.....

hereinafter called the "Employer," all meat markets and chain store meat markets, all combination Grocery and Meat Markets in Chicago and County of Cook; and the AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 546 (A. F. of L.) acting as the Collective Bargaining Agent for its members. This Contract approved and passed by the International Executive Board at the General Office the tenth day of October, 1955.

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### ARTICLE 1. GENERAL

Section 1. *Consideration.* For and in consideration of the mutual promises of the parties hereto and for other good and valuable considerations, receipt of which is hereby acknowledged, this Agreement is entered into.

Section 2. *Scope of Contract.* It is agreed that this Contract shall govern the hours, wages and other conditions of employment of Employer's meat department employees in Service Meat Markets only within the geographical jurisdiction of Local 546 and that the hours, wages and other conditions of employment of Employer's meat department employees in Self-Service Meat Markets are covered by a separate contract. It is further agreed that the Employer

DOCKETED

58C1415

FILED

MAY 28 1963

AT O'CLOCK  
ELBERT A. WAGNER, JR.  
CLERK

[fol. 163]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANTS' EXHIBIT 400

shall have the sole discretion of determining from time to time which system of merchandising, service or self-service, shall be utilized in each of the Employer's markets; provided that the Employer shall comply with the wages, hours and other contractual conditions of employment pertaining to the system of merchandising used in that market.

### Section 3. Definitions.

(a) *Apprentice*: An apprentice is an employee who is in training to become a Journeyman butcher. Apprentices must be at least sixteen (16) years of age.

(b) *Journeyman*: After serving three (3) years of apprenticeship, an employee shall be classified as a Journeyman meat cutter and shall receive the Journeyman rate of pay.

(c) *Head Meat Cutter*: The term "Head Meat Cutter" means a Journeyman meat cutter who is responsible for the efficient management of the market.

(d) *Self-Service and Service*: A self-service market is one in which fresh or frozen beef, veal, lamb, mutton or pork are available for sale on a pre-package self-service basis. It is agreed that any market which is operated on a partially service and partially self-service basis shall be classified as a self-service market if any fresh or frozen beef, veal, lamb, mutton or pork are made available for sale on a pre-package self-service basis, even though there is also a service counter offering custom cutting for those who prefer it. Such semi-self-service market shall be considered a self-service market subject to the terms and conditions and wage scale contained in the Self-Service Contract.

If no fresh or frozen beef, veal, lamb, mutton or pork are sold on a self-service basis, then the market is a Service Market and shall be operated in accordance with this Service Contract. It is further expressly understood and agreed that if all fresh or frozen beef, veal, lamb, mutton and pork sold by a market are handled and sold on a service basis only, the fact that a market handles and sells, on a self-service basis, delicatessen and other meat products now excepted from the jurisdiction of the Union under this Service Contract shall not operate to classify such market as a self-service market; but such semi-self-service market shall nevertheless be considered a service market subject only to the wage scales, hours and other conditions provided in this Service Contract.

In the event of any dispute as to whether a meat market shall be classed as a service market subject to the terms and conditions of this Service Contract or a self-service market subject to the terms and conditions of the Self-Service Contract, the decision of the Union shall be binding unless and until said decision has been set aside by any arbitration proceedings; provided, however, that either party may require that such dispute be submitted to arbitration forthwith.

**Section 4. Notices.** All notices required under this Contract shall be deemed to be properly served if delivered in writing personally or sent by certified mail to the offices of the Union at 130 North Wells Street, Chicago, Illinois, or to the Employer at the address designated below, or to any subsequent address which the Union or the Employer may designate in writing for such purpose. Date of service of a notice served by mail shall be the date on which such notice is post-marked by a post-office of the United States Post Office Department.

**Section 5. Partial Invalidity.** Nothing contained in this Agreement is intended to violate any Federal Law, Rule, or Regulation made pursuant thereto. If any part of this Agreement is construed to be in such violation, then that part shall be made null and void and the parties agree that they will immediately begin negotiations to replace said void part with a valid provision.

**Section 6. Authority of Signing Parties.** The parties hereto certify that they are empowered and duly authorized to sign this Agreement.

## ARTICLE 2. JURISDICTION

The Employer recognizes and agrees that said Union is and shall be the sole and exclusive collective bargaining agency for and on behalf of all meat cutters and butcher workmen employed by said Employer on their premises; including those workers processing, packing, wrapping and selling frozen fresh meats.

The parties agree that all fish, poultry, rabbits, meats and its kindred products, fresh or frozen, except:

- sliced boiled, baked or barbecued ham;
- sliced packaged bacon;
- sliced packaged dried beef;
- sliced packaged Canadian bacon;
- all smoked sausage;
- canned and glassed meats of all kinds;
- all ready-to-eat prepared meats, poultry, and fish;
- frozen packaged fish;
- all meats NOT for human consumption

will be sold, cut, prepared and fabricated by meat department employees, and said cutting, preparing, fabricating and packaging of above products into retail cuts will be done on the premises or in the immediate vicinity thereof.



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- frozen packaged fish;
- all meats NOT for human consumption

will be sold, cut, prepared and fabricated by meat department employees, and said cutting, preparing, fabricating and packaging of above products into retail cuts will be done on the premises or immediately adjacent thereto.

Frozen fresh poultry, cut-up or whole, and vacuum or comparably tight-wrapped ham slices, shanks and butts may be prepared by the packer, supplier or Employer off the premises. Frozen fresh poultry may be sold from self-service cases after the market hours provided in Article 5; provided, however, that it is priced or pre-priced by meat department employees on the premises.

## ARTICLE 3. WAGES

**Section 1. Wage Rates—Weekly, Extra Day and Overtime.** Not less than the following wages shall be paid to service market employees during the term of this Contract:

	MINIMUM WEEKLY WAGE FOR BASIC WORKWEEK	EXTRA DAY RATES FULL DAY	HALF DAY	OVERTIME RATES
Head Meat Cutters .....	\$102.00	\$21.10	\$10.70	\$3.83
Journeyman .....	95.50	20.10	10.05	3.58
Apprentices—				
First Year .....	67.00	14.40	7.20	2.51
Second Year .....	73.00	15.60	7.80	2.74
Third Year .....	79.00	16.80	8.40	2.96

Any employee receiving above the minimum shall not be increased in hours, nor decreased in wages or working conditions.

**Section 2. Payment of Extra Day Rates.** The extra day and half day rates shall be paid whenever an employee works the sixth (6th) day of a regular workweek or the fifth (5th) day of a holiday week. These rates provide a \$1.00 premium over the average daily rate for a full day and a 50 cent premium over the average for a half day.

**Section 3. Extra Help.** Extra help shall be paid at the extra day rates set out above except in the event that they work the full week when they are to receive the minimum weekly wage set out above for their classification.

#### ARTICLE 4. WORKING HOURS AND OTHER CONDITIONS OF EMPLOYMENT

**Section 1. Basic Workday.** Eight (8) hours shall constitute the basic workday, Monday through Saturday; work to begin at 9:00 a.m. and stop at 6:00 p.m., allowing one hour for lunch, said hour to begin no earlier than 11:00 a.m. nor end later than 2:00 p.m. This is to apply to all markets whether manned by one or more than one employee. Employees must be dressed and ready for work at 9:00 a.m. Monday through Saturday.

**Section 2. Basic Workweek.** Five (5) days shall constitute the basic workweek, to be worked Monday through Saturday, with one full day off within each shop, for each employee at the Employer's discretion. The day off shall be rotated or changed in accordance with the mutual agreement of the Employer and his employees.

**Section 3. Sixth Day Guarantee.** Any employee called to work on the sixth (6th) day in any regular workweek, shall be guaranteed four (4) hours' work. Reporting time on the sixth (6th) day shall be either 9:00 a.m. or 2:00 p.m. Head Meat Cutters and Journeymen shall be given preference over Apprentices for work on the sixth (6th) full or half day during a regular workweek and on the fifth (5th) full or half day during a holiday week.

**Section 4. Overtime.** Overtime may be worked behind locked doors at overtime rates from 8:30 a.m. to 9:00 a.m., after 6:00 p.m., and after eight (8) hours in any one day, at the Employer's discretion.

**Section 5. Inventory.** Employees shall not take inventory outside of regular working hours.

**Section 6. Restrictions on Apprentices.** Apprentices may be employed at a ratio of not exceeding two (2) for each five (5) Journeymen employed by the Employer within the jurisdiction of the Local. A quarterly report covering the number of Apprentices employed in relationship to the number of Journeymen shall be furnished the Union.

Apprentices shall not work part time or as extra men on Saturdays or the day preceding holidays.

**Section 7. Tools.** Laundry, tools and sharpening of tools are to be furnished free of cost by Employer.

**Section 8. Clean-Up Time.** It is expressly understood that no customer shall be served who comes into the market before or after hours set forth in Article 5, that all customers in the market at the closing hour shall be served, that all meats will be properly taken care of and the market placed in a sanitary condition. Such work not to exceed fifteen (15) minutes and not to be construed as overtime. Such clean-up time shall not be utilized to prepare for the following day's business and shall not be accumulative from day to day.

#### ARTICLE 5. MARKET OPERATING HOURS

Market operating hours shall be 9:00 a.m. to 6:00 p.m. Monday through Saturday, inclusive. No customer shall be served who comes into the market before or after the hours set forth above, except that customers in the market at the closing hour shall be served.

#### ARTICLE 6. HOLIDAYS, VACATIONS AND OTHER COMPENSABLE ABSENCES

**Section 1. Holidays.** There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day.



Section 2. *Payment of Extra Day Rates.* The extra day and half day rates shall be paid whenever an employee works the sixth (6th) day of a regular workweek or the fifth (5th) day of a holiday week. These rates provide a \$1.00 premium over the average daily rate for a full day and a 50 cent premium over the average for a half day.

Section 3. *Extra Help.* Extra help shall be paid at the extra day rates set out above except in the event that they work the full week when they are to receive the minimum weekly wage set out above for their classification.

#### ARTICLE 4. WORKING HOURS AND OTHER CONDITIONS OF EMPLOYMENT

Section 1. *Basic Workday.* Eight (8) hours shall constitute the basic workday, Monday through Saturday; work to begin at 9:00 a.m. and stop at 6:00 p.m., allowing one hour for lunch, said hour to begin no earlier than 11:00 a.m. nor end later than 2:00 p.m. This is to apply to all markets whether manned by one or more than one employee. Employees must be dressed and ready for work at 9:00 a.m. Monday through Saturday.

Section 2. *Basic Workweek.* Five (5) days shall constitute the basic workweek, to be worked Monday through Saturday, with one full day off within each shop, for each employee at the Employer's discretion. The day off shall be rotated or changed in accordance with the mutual agreement of the Employer and his employees.

Section 3. *Sixth Day Guarantee.* Any employee called to work on the sixth (6th) day in any regular workweek, shall be guaranteed four (4) hours' work. Reporting time on the sixth (6th) day shall be either 9:00 a.m. or 2:00 p.m. Head Meat Cutters and Journeymen shall be given preference over Apprentices for work on the sixth (6th) full or half day during a regular workweek and on the fifth (5th) full or half day during a holiday week.

Section 4. *Overtime.* Overtime may be worked behind locked doors at overtime rates from 8:30 a.m. to 9:00 a.m., after 6:00 p.m., and after eight (8) hours in any one day, at the Employer's discretion.

Section 5. *Inventory.* Employees shall not take inventory outside of regular working hours.

Section 6. *Restrictions on Apprentices.* Apprentices may be employed at a ratio of not exceeding two (2) for each five (5) Journeymen employed by the Employer within the jurisdiction of the Local. A quarterly report covering the number of Apprentices employed in relationship to the number of Journeymen shall be furnished the Union.

Apprentices shall not work part time or as extra men on Saturdays or the day preceding holidays.

Section 7. *Tools.* Laundry, tools and sharpening of tools are to be furnished free of cost by Employer.

Section 8. *Clean-Up Time.* It is expressly understood that no customer shall be served who comes into the market before or after hours set forth in Article 5, that all customers in the market at the closing hour shall be served, that all meats will be properly taken care of and the market placed in a sanitary condition. Such work not to exceed fifteen (15) minutes and not to be construed as overtime. Such clean-up time shall not be utilized to prepare for the following day's business and shall not be accumulative from day to day.

#### ARTICLE 5. MARKET OPERATING HOURS

Market operating hours shall be 9:00 a.m. to 6:00 p.m. Monday through Saturday, inclusive. No customer shall be served who comes into the market before or after the hours set forth above, except that customers in the market at the closing hour shall be served.

#### ARTICLE 6. HOLIDAYS, VACATIONS AND OTHER COMPENSABLE ABSENCES

Section 1. *Holidays.* There shall be no work on Sundays, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day. When and if Victory Day is declared a national legal holiday it shall be made part of this Article.

Employees who are absent the regularly scheduled workday before, or after, a holiday, or both, except in the case of proven illness or unavoidable absence shall not receive holiday pay, but shall be paid only for the hours actually worked.

During a holiday week the employee shall receive a full week's pay for four (4) days of work; if an employee works the fifth (5th) day during a holiday week, or the sixth (6th) day during a regular workweek he shall be paid the extra day or half day rates set out in Article 3.

It is agreed that the Head Meat Cutters and Journeymen will be given preference over Apprentices for work on the

sixth (6th) full or half day during a regular workweek, and on the fifth (5th) full or half day during a holiday week.

**Section 2. Vacations:** Any employee who has given service for the course of one year shall be entitled to one week's vacation with pay. After two (2) years of service he shall be entitled to two (2) weeks' vacation with pay. Effective January 1, 1956, all employees having twelve (12) years of continuous full-time service shall be entitled to three (3) weeks of vacation with pay. Unless otherwise mutually agreed upon between Employer and employee, vacation weeks shall be taken consecutively. A man relieving a Head Meat Cutter on vacation shall receive the Contract rate of pay for Head Meat Cutters. In case of dispute the matter shall be referred to arbitration, as provided for in Article 7.

Whenever a holiday listed in Section 1 of this Article falls within an employee's vacation period, the employee shall receive an extra day's pay or a subsequent day off, at the Employer's option.

**Section 3. Absences Due to Injuries.** Any regular employee unable to work because of injuries received during the regularly scheduled workweek and whose injuries arose out of or during the course of his employment shall be entitled to a full day's pay for each day lost because of such injuries, but not exceeding four (4) days in any such workweek; provided, however, that the employee shall report upon receipt of the injury to the Employer's physician whose decision with respect to the length of time required off shall be controlling; provided further, that nothing in this provision shall affect any rights accrued to either party under the State Workmen's Compensation Act, and that the Employer shall receive credit for any payment made under this provision should compensation be awarded by the State Commission.

## ARTICLE 7. UNION-MANAGEMENT RELATIONS

**Section 1. Union Employees.** Local 546, if requested, will furnish men, insofar as they are available, who will work to the best interest of the Employer in every way, just and lawful, who will give honest and diligent service to patrons of the Employer's establishment and who will do everything within their power for the uplifting of the meat industry.

**Section 2. Union Shop.** The Employer agrees to employ and keep in employment only such persons who, thirty (30) days after the effective date hereof or thirty (30) days after commencement of employment, whichever is later, are, and thereafter continue to remain, members in good standing of said Union. The Employer agrees that, upon written notice from the Union, it will discharge at the Union's request any person, within a period of fifteen (15) days, who shall not be in good standing.

**Section 3. Union Preference.** When permitted by law, the Employer agrees that when in need of help he will give preference to members in good standing in the Union.

**Section 4. Business Representatives.** Union Business Representatives shall be admitted to the Employer's market premises during the hours meat department employees are working for the purpose of ascertaining whether or not this Agreement is being observed and for collecting dues. Such activities shall be conducted in such a manner as not to interfere with the orderly operation of Employer's business. Business Representatives have full authority and approval from both parties to this Agreement to immediately remove and require the discharge of any men working below the wage scale fixed herein.

**Section 5. Discharge.** No employee shall be discharged without good and sufficient cause; drunkenness, dishonesty, incompetency, incivility or an over supply of help will be sufficient cause for dismissal, or help can be dismissed providing preference be given to Union men in replacing help.

**Section 6. Display of Contract and Union Shop Cards.** This Agreement is to be kept posted in the place of employment so that every employee may have equal and easy access to same.

It will be the duty of the Employer to prominently display Union shop cards in all establishments wherein Union meat cutters are employed. These cards shall remain the property of the Union, and the Employer shall have their usage only until such time as the Union shall request their return. The Employer agrees to surrender same immediately upon demand by the Union.

**Section 7. Grievances and Arbitration.** All grievances which cannot be adjusted by the Union and the Employer shall be referred to an Arbitration Board consisting of two (2) members to be named by the Union, two (2) by the affected Employer and one to be agreed upon by the four (4) already selected.

No strike, cessation of work, picketing, boycott or lock-out is to occur when arbitration has been requested by either party, provided that the dispute has been heard and decided within a thirty (30) day period from submission.



Whenever a holiday listed in Section 1 of this Article falls within an employee's vacation period, the employee shall receive an extra day's pay or a subsequent day off, at the Employer's option.

**Section 3. Absences Due to Injuries.** Any regular employee unable to work because of injuries received during the regularly scheduled workweek and whose injuries arose out of or during the course of his employment shall be entitled to a full day's pay for each day lost because of such injuries, but not exceeding four (4) days in any such workweek; provided, however, that the employee shall report upon receipt of the injury to the Employer's physician whose decision with respect to the length of time required off shall be controlling; provided further, that nothing in this provision shall affect any rights accrued to either party under the State Workmen's Compensation Act, and that the Employer shall receive credit for any payment made under this provision should compensation be awarded by the State Commission.

## ARTICLE 7. UNION-MANAGEMENT RELATIONS

**Section 1. Union Employees.** Local 546, if requested, will furnish men, insofar as they are available, who will work to the best interest of the Employer in every way, just and lawful, who will give honest and diligent service to patrons of the Employer's establishment and who will do everything within their power for the uplifting of the meat industry.

**Section 2. Union Shop.** The Employer agrees to employ and keep in employment only such persons who, thirty (30) days after the effective date hereof or thirty (30) days after commencement of employment, whichever is later, are, and thereafter continue to remain, members in good standing of said Union. The Employer agrees that, upon written notice from the Union, it will discharge at the Union's request, any person, within a period of fifteen (15) days, who shall not be in good standing.

**Section 3. Union Preference.** When permitted by law, the Employer agrees that when in need of help he will give preference to members in good standing in the Union.

**Section 4. Business Representatives.** Union Business Representatives shall be admitted to the Employer's market premises during the hours meat department employees are working for the purpose of ascertaining whether or not this Agreement is being observed and for collecting dues. Such activities shall be conducted in such a manner as not to interfere with the orderly operation of Employer's business. Business Representatives have full authority and approval from both parties to this Agreement to immediately remove and require the discharge of any men working below the wage scale fixed herein.

**Section 5. Discharge.** No employee shall be discharged without good and sufficient cause; drunkenness, dishonesty, incompetency, incivility or an over supply of help will be sufficient cause for dismissal, or help can be dismissed providing preference be given to Union men in replacing help.

**Section 6. Display of Contract and Union Shop Cards.** This Agreement is to be kept posted in the place of employment so that every employee may have equal and easy access to same.

It will be the duty of the Employer to prominently display Union shop cards in all establishments wherein Union meat cutters are employed. These cards shall remain the property of the Union, and the Employer shall have their usage only until such time as the Union shall request their return. The Employer agrees to surrender same immediately upon demand by the Union.

**Section 7. Grievances and Arbitration.** All grievances which cannot be adjusted by the Union and the Employer shall be referred to an Arbitration Board consisting of two (2) members to be named by the Union, two (2) by the affected Employer and one to be agreed upon by the four (4) already selected.

No strike, cessation of work, picketing, boycott or lock-out is to occur when arbitration has been requested by either party, provided that the dispute has been heard and decided within a thirty (30) day period from submission.

Grievances of any nature must be made within forty-five (45) calendar days after the cause giving rise to the grievance becomes evident; and wage claims shall not be valid and collectible for a period earlier than ninety (90) days prior to the date of filing the grievance or the date the grievance arose, whichever date is most recent.

**Section 8. Withdrawal Cards.** Any member of Local 546 who is in good standing and is in business for himself who may desire to affiliate with the..... may apply for a withdrawal card, provided

the request be accompanied by a similar request from the..... Withdrawal card may be obtained upon application to the Executive Board of Local 546.

ARTICLE 8. TERM

Section 1. *Initial Term.* This Agreement shall become effective at 12:01 a.m., October 2, 1955, and shall expire at 12:00 midnight, October 6, 1956.

Section 2. *Renewal Term.* If either party wishes to modify this Agreement at its expiration, it shall serve notice in writing of such request upon the other party not less than sixty (60) days prior to the expiration date. In the absence of the service of such notice, this Contract shall automatically renew itself for a period of one year and from year to year thereafter, it being further agreed that the Contract expiration date shall be the first Saturday in October of each year.

Section 3. *Retroactivity.* This Contract shall remain in full force and effect until a new agreement is negotiated, but not beyond an additional sixty (60) days beyond the Contract expiration date. Any increases in wages set out in Article 3 resulting from the negotiations following the Contract expiration date shall be retroactive to the date of expiration, but not exceeding ninety (90) calendar days, whichever period shall be shorter. There shall be no retroactivity with respect to other contract changes, such as changes in working hours or premium or overtime pay.

Executed at Chicago, Illinois, this.....day of....., 1955.

LOCAL 546, AMALGAMATED MEAT CUTTERS AND  
BUTCHER WORKMEN OF NORTH AMERICA, A.F.of L.

By.....  
President

By.....  
Secretary-Treasurer

Employer.....

By.....

Employer's Address.....

.....

.....

[fol. 167]

*Meeting of District Union at 11 o'clock on November 15th at 9:30*

*Def 1 Union Ex 41, ind. 544*

PROPOSAL MADE TO THE UNION ON NOVEMBER 12, 1957.  
IN BEHALF OF THE INDUSTRY, EXCLUDING ASSOCIATED FOOD DEALERS  
*who will take back 4 mg.*

Application:- Contract provisions proposed herein to be applicable to all cities in all Locals, excluding Local No. 189, in which employers operate meat markets or departments. The proposals are as follows:

1. Term of Agreement:- 2 years. Effective date - October 7, 1957, except as otherwise proposed herein re specific provisions; Expiration date - October 3, 1959.

2. Night Operation:- Friday night meat department operation effective December 2, 1957. Male employee to be on duty during market operation.

3. Wage Schedule:-

(a) Self-Service Markets

	<u>Effective Dates</u>	
	<u>10-7-57</u>	<u>10-6-58</u>
Head Meat Cutter	<u>112.50</u>	<u>116.50</u>
Journeyman	<u>106.00</u>	<u>110.00</u>
<u>Service Markets</u>	<u>8.00</u>	<u>6.50</u>
Head Meat Cutter	<u>110.</u>	<u>116.50</u>
Journeyman	<u>103.50</u>	<u>110.00</u>

(b) Apprentices

0 to 6 Months	<u>72</u>	<u>75</u>
6 to 12 Months	<u>75</u>	<u>78</u>
12 to 18 Months	<u>77.50</u>	<u>80.50</u>
18 to 24 Months	<u>80.50</u>	<u>83.50</u>
24 to 36 Months	<u>84.00</u>	<u>87.00</u>

Note: Apprentices rates to be based on percentage ratio of Self-Service journeyman rate, as follows:

0 to 6 Months	66%
6 to 12 Months	69%
12 to 18 Months	72%
18 to 24 Months	75%
24 to 36 Months	81%

(Apprentice rates apply to Service and Self-Service Markets and Departments).

4. Female Wrappers

(a) Wage Schedule:-

0 to 6 Months	<u>52.50</u>
---------------	--------------

*OFFER COVERS.*

*1st time  
1.50  
2.10  
3.00  
4.00  
5.00  
6.00  
7.00  
8.00  
9.00  
10.00*

[fol. 168]

IN UNITED STATES DISTRICT  
 FOR THE NORTHERN DISTRICT  
 DEFENDANTS' EXHIBIT



Def. 24. 41

4. Female Wrappers (Continued)

- (b) Duties:- Wrapping (including boarding and trayng), sealing, scaling, pricing, labeling, displaying and slicing of luncheon meats.
- (c) Male employment guarantee:- No male employee on the payroll as of the Monday following ratification of the contract shall lose his employment due to the hiring of a female wrapper; the Union shall be notified immediately of the employment of new female wrappers.

5. Wage Rates for 5th Day of Work in Holiday Week and 6th Day of Work in Regular Week:- To be adjusted in direct ratio to Wage Schedules specified above plus present amount of premium. *1.00 per day*

6. Work Day; Luncheon Period:-

- (a) Effective December 2, 1957, the work day to be changed to an 8 hour work day to be worked between the hours of:
  - 1. 8:00 A.M. to 6:00 P.M. on Monday, Tuesday, Wednesday, Thursday, and Saturday.
  - 2. 8:00 A.M. to 9:00 P.M. on Friday.
- (b) One hour shall be allowed for lunch in all markets whether manned by one or more than one employee; said lunch hour to begin no earlier than 11:00 A.M. and to end no later than 2:00 P.M. except that employees scheduled to work until 9:00 P.M. shall be allowed a supper period in lieu of lunch period.
- (c) Employees must be dressed and ready for work at the scheduled starting time.

7. Overtime or Premium Pay:- Effective December 2, 1957, all contract provisions requiring the payment of time and one-half after 6:00 P.M. and before 9:00 A.M. to be eliminated and the following provision substituted therefor:

- (a) Night premium in the amount of 25¢ per hour shall be payable for all hours worked after 6:00 P.M. up to 6:00 A.M.
- (b) Overtime may be worked at any time except Sundays and holidays at the discretion of the employer; overtime to be paid for at time and one-half the employee's regular hourly wage rate. Overtime payable on the above basis for all hours worked:
  - 1. After 8 hours of work in any work day.
  - 2. Before 8:00 A.M.
- (c) Employee's regular hourly wage rate is defined as the employee's straight hourly wage rate (including night work premium, when applicable) of pay in effect during overtime hours.
- (d) Overtime shall not be pyramided; that is, paid for twice for the same hour worked; thus, in calculating the overtime for any employee in any work week, any hours for which overtime is payable under one of the above provisions shall not be used for calculating overtime under any other provision.

5. Wage Rates for 5th Day of Work in Holiday Week and 6th Day of Work in Regular Week:- To be adjusted in direct ratio to Wage Schedules specified above plus present amount of premium. 1.00 per day

6. Work Day; Luncheon Period:-

(a) Effective December 2, 1957, the work day to be changed to an 8 hour work day to be worked between the hours of:

1. 8:00 A.M. to 6:00 P.M. on Monday, Tuesday, Wednesday, Thursday, and Saturday.

2. 8:00 A.M. to 9:00 P.M. on Friday.

(b) One hour shall be allowed for lunch in all markets whether manned by one or more than one employee; said lunch hour to begin no earlier than 11:00 A.M. and to end no later than 2:00 P.M. except that employees scheduled to work until 9:00 P.M. shall be allowed a supper period in lieu of lunch period.

(c) Employees must be dressed and ready for work at the scheduled starting time.

7. Overtime or Premium Pay:- Effective December 2, 1957, all contract provisions requiring the payment of time and one-half after 6:00 P.M. and before 9:00 A.M. to be eliminated and the following provision substituted therefor:

(a) Night premium in the amount of 25¢ per hour shall be payable for all hours worked after 6:00 P.M. up to 6:00 A.M.

(b) Overtime may be worked at any time except Sundays and holidays at the discretion of the employer; overtime to be paid for at time and one-half the employee's regular hourly wage rate. Overtime payable on the above basis for all hours worked:

1. After 8 hours of work in any work day.

2. Before 8:00 A.M.

(c) Employee's regular hourly wage rate is defined as the employee's straight hourly wage rate (including night work premium, when applicable) of pay in effect during overtime hours.

(d) Overtime shall not be pyramided; that is, paid for twice for the same hour worked; thus, in calculating the overtime for any employee in any work week, any hours for which overtime is payable under one of the above provisions shall not be used for calculating overtime under any other provision.

8. Work Week:- The work week shall consist of 40 hours in all Locals except Local No. 262. The work week in Service Markets in cities within the jurisdiction of Local No. 262 shall be reduced from 42 to 40 hours, effective December 2, 1957.

9. Clean-Up Time:

- (a) Self-Service Markets:- Clean-up may be performed after 6:00 P.M. provided 25¢ per hour premium is paid for such work performed after 6:00 P.M.
- (b) Service Markets:- Customers in the meat department at closing hour shall be served; all meats will be properly taken care of and the market placed in a sanitary condition; such work not to exceed 15 minutes after closing hour and is not to be construed as time worked. Clean-up time shall not be utilized to prepare for the following day's business and shall not be cumulative from day to day. It is understood that no customer shall be served who comes into the market or meat department before or after the hours set forth in Article 5.(Market Operating Hours).

10. Article 4, Section 5 - eliminate in Service and Self-Service contracts.

11. Article 4, Section 7. - Second and third paragraphs of Self-Service contract - eliminate.

12. Article 2, Section 2. of Self-Service contract and Article 2 of Service contract - Add to or revise as follows:

Those items which may be pre-packaged off the premises by the packer, supplier or the employer may be pre-priced off the premises.

13. Article 2. - Modify the Article in both Service and Self-Service contracts to permit the sale outside of market operating hours of fresh poultry processed on the premises, fresh pork sausage, smoked hams and smoked butts and ham slices from Self-Service cases.

14. Frozen Specialty Items:- Modify Article 2 in Service and Self-Service contracts to provide that the employer may sell frozen fresh meat specialty items processed off the premises, but not including frozen fresh cuts comparable to the standard fresh retail cuts.

Examples of items that may be sold:

- (a) Frozen and formed (flaked, chopped or cubed) patties with or without butter or vegetables.
- (b) Frozen and formed (flaked, chopped or cubed) patties, steaks or chopettes, breaded or not breaded.
- (c) Frozen and formed meat balls.
- (d) Frozen offal (liver, brains, kidneys, hearts, sweetbreads, etc.).

15. Article 2. of Self-Service contract.- Modify to provide that special service type delicatessen departments requiring manual processing of unwrapped smoked sausage, loaf meats and ready-to-eat meats can be operated in Self-Service markets with the same jurisdictional exemption as in Article 2. of the Service contract.

16. Rest Periods:- Two 10 minute rest periods per day in Service and Self-Service contracts.



not to exceed 15 minutes after closing hour and is not to be construed as time worked. Clean-up time shall not be utilized to prepare for the following day's business and shall not be cumulative from day to day. It is understood that no customer shall be served who comes into the market or meat department before or after the hours set forth in Article 5. (Market Operating Hours).

10. Article 4, Section 5 - eliminate in Service and Self-Service contracts.
11. Article 4, Section 7. - Second and third paragraphs of Self-Service contract - eliminate.
12. Article 2, Section 2. of Self-Service contract and Article 2 of Service contract - Add to or revise as follows:  
  
Those items which may be pre-packaged off the premises by the packer, supplier or the employer may be pre-priced off the premises.
13. Article 2: - Modify the Article in both Service and Self-Service contracts to permit the sale outside of market operating hours of fresh poultry processed on the premises, fresh pork sausage, smoked hams and smoked butts and hot slices from Self-Service cases.
14. Frozen Specialty Items:- Modify Article 2 in Service and Self-Service contracts to provide that the employer may sell frozen fresh meat specialty items processed off the premises, but not including frozen fresh cuts comparable to the standard fresh retail cuts.  
  
Examples of items that may be sold:
  - (a) Frozen and formed (flaked, chopped or cubed) patties with or without butter or vegetables.
  - (b) Frozen and formed (flaked, chopped or cubed) patties, steaks or chopettes, breaded or not breaded.
  - (c) Frozen and formed meat balls.
  - (d) Frozen offal (liver, brains, kidneys, hearts, sweetbreads, etc.).
15. Article 2. of Self-Service contract.- Modify to provide that special service type delicatessen departments requiring manual processing of unwrapped smoked sausage, loaf meats and ready-to-eat meats can be operated in Self-Service markets with the same jurisdictional exemption as in Article 2. of the Service contract.
16. Rest Periods:- Two 10 minute rest periods per day in Service and Self-Service contracts.
17. Article 8, Section 3. Modify both contracts to provide 30 day continuance of contract and a maximum of 60 day wage retroactivity.
18. Successor and Assigns Provision:- As agreed upon.
19. Right of Industry to Change and Amend Proposal at Any Time.



Received  
November 13, 1957

Def. Union 42 id

15

5000  
7100  
1500  
430  
600  
400  
900

PROPOSAL MADE TO THE UNION ON NOVEMBER 11, 1957,

IN BEHALF OF THE INDUSTRY, UNITING ASSOCIATIONS OF MEAT CUTTERS.

**Application:-** Contract provisions proposed herein to be applicable to all cities in all Locals, excluding Local No. 169, in which Employers operate meat markets or departments. The proposals are as follows:

1. **Term of Agreement:-** 2 Years. Effective date - October 7, 1957, except as otherwise proposed herein re specific provisions; Expiration date - October 3, 1959.
2. **Night Operation:-** Friday night meat department operation, effective OCT 6 - 1957. Male employee to be on duty during market operation.

3. **Wage Schedule:-**

(a) **Self-Service Markets**

	Effective 10-7-57	Dates 10-6-58
Head Meat Cutter Journeyman	<u>112.50</u> <u>128.00</u>	<u>118.50</u> <u>112.50</u>
<b>Service Markets</b>	<u>95.00</u> <u>50</u>	<u>50</u> <u>50</u>
Head Meat Cutter Journeyman	<u>111.50</u> <u>105.00</u>	<u>116.50</u> <u>110.50</u>

(b) **Apprentices**

0 to 6 Months	<u>72</u>	<u>75</u>
6 to 12 Months	<u>75</u>	<u>78</u>
12 to 18 Months	<u>78</u>	<u>81</u>
18 to 24 Months	<u>81</u>	<u>84</u>
24 to 36 Months	<u>86</u>	<u>89</u>

(Apprentice rates apply to Service and Self-Service Markets and Departments).

4. **Female Wrappers**

(a) **Wage Schedule:-**

	Effective from 12-2-57 to 10-3-59
0 to 6 Months	<u>52.50</u>
6 to 12 Months	<u>55</u>
12 to 18 Months	<u>57.50</u>
18 to 24 Months	<u>60</u>
24 to 36 Months	<u>65</u>
After 36 Months	<u>70</u>

[fol. 171]  
IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILL.  
DEFENDANTS' EXHIBIT 42

Application:- Contract provisions proposed herein to be applicable to all cities in all Locals, excluding Local No. 189, in which Employers operate meat markets or departments. The proposals are as follows:

1. Term of Agreement:- 2 Years. Effective date - October 7, 1957, except as otherwise proposed herein re specific provisions; Expiration date - October 3, 1959.

2. Night Operation:- Friday night meat department operation, effective OCT 6 - 1957. One employee to be on duty during market operation.

3. Wage Schedule:-

(a) Self-Service Markets

	Effective 10-7-57	Dates 10-6-58
Head Meat Cutter	112.50	118.50
Journeyman	108.00	112.50
<u>Service Markets</u>	95.00	55.00
Head Meat Cutter	111.50	116.50
Journeyman	105.00	110.50

(b) Apprentices

0 to 6 Months	72	75
6 to 12 Months	75	78
12 to 18 Months	78	81
18 to 24 Months	81	84
24 to 36 Months	84	87

(Apprentice rates apply to Service and Self-Service Markets and Departments).

4. Female Wrappers

(a) Wage Schedule:-

	Effective from 12-2-57 to 10-3-59
0 to 6 Months	52.50
6 to 12 Months	55.00
12 to 18 Months	57.50
18 to 24 Months	60.00
24 to 36 Months	62.50
After 36 Months	65.00

(Part-time wrappers to receive pro-rata weekly rate of full-time wrapper; part-time wrappers to not be employed in excess of 24 hours per week; wage progression to be based on accumulated hours equivalent to those worked by full-time wrappers).

*Employer State; will not stand in way of settlement.*

[fol. 171]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
DEFENDANTS' EXHIBIT 42

4. Female Wrappers (Continued)

(b) Duties:- Wrapping (including boarding and traying), sealing, scaling, pricing, labeling, displaying, and slicing of luncheon meats.

(c) Male Employment Guarantee:- No male employee on the payroll as of the Monday following ratification of the contract shall lose his employment due to the hiring of a female wrapper; the Union shall be notified immediately of the employment of new female wrappers.

5. Wage Rates for 5th Day of Work in Holiday Week and 6th Day of Work in Regular Week:- To be adjusted in direct ratio to Wage Schedules specified above plus present amount of premium. *7-25-1957*

6. Work Day; Luncheon Period:-

(a) Effective December 2, 1957, the work day to be changed to an 8 hour work day to be worked between the hours of:

1. 8:00 A.M. to 5:00 P.M. on Monday, Tuesday, Wednesday, ~~THRU~~ Thursday, and Saturday.

2. 8:00 A.M. to 9:00 P.M. on Friday, *effective Oct 6, 1958*

(b) One hour shall be allowed for lunch in all markets whether manned by one or more than one employee; said lunch hour to begin no earlier than 11:00 A.M. and to end no later than 2:00 P.M. except that employees scheduled to work until 9:00 P.M. shall be allowed a supper period in lieu of lunch period.

(c) Employees must be dressed and ready for work at the scheduled starting time.

7. Overtime or Premium Pay:- Effective December 2, 1957, all contract provisions requiring the payment of time and one-half ~~at~~ 6:00 P.M. and before 9:00 A.M. to be eliminated and the following provision substituted therefor:

*EFFECTIVE  
OCT 6 - 58*

(C)(2) Night premium in the amount of 25¢ per hour shall be payable for all hours worked after 6:00 P.M. up to 6:00 A.M.

(A)(b) Overtime may be worked at any time except Sundays and holidays at the discretion of the employer; overtime to be paid for at time and one-half the employee's regular hourly wage rate. Overtime payable on the above basis for all hours worked;

1.. After 8 hours of work in any work day.

2.. Before 8:00 A.M.

(b)(c) Employee's regular hourly wage rate is defined as the employee's straight hourly wage rate (including night work premium, when applicable) of pay in effect during overtime hours.

(d) Overtime shall not be pyramided; that is, paid for twice for the same hour worked; thus, in calculating the overtime for any employee in any work week, any hours for which overtime is payable under one of the above provisions shall not be used for calculating overtime under any other provision.

5. Wage Rates for 5th Day of Work in Holiday Week and 6th Day of Work in Regular Week:- To be adjusted in direct ratio to Wage Schedules specified above plus present amount of premium. *7-5-57*

6. Work Day; Luncheon Period:-

- (a) Effective December 2, 1957, the work day to be changed to an 8 hour work day to be worked between the hours of:

1. 8:00 A.M. to 5:00 P.M. on Monday, Tuesday, Wednesday, ~~THRU~~ Thursday, and Saturday.

2. 8:00 A.M. to 9:00 P.M. on Friday, *effective Oct 6, 1958*

- (b) One hour shall be allowed for lunch in all markets whether manned by one or more than one employee; said lunch hour to begin no earlier than 11:00 A.M. and to end no later than 2:00 P.M. except that employees scheduled to work until 9:00 P.M. shall be allowed a supper period in lieu of lunch period.

- (c) Employees must be dressed and ready for work at the scheduled starting time.

7. Overtime or Premium Pay:- Effective December 2, 1957, all contract provisions requiring the payment of time and one-half ~~after~~ 6:00 P.M. and before 9:00 A.M. to be eliminated and the following provision substituted therefor:

*EFFECTIVE  
OCT 6 - 58*

- (C)(d) Night premium in the amount of 25¢ per hour shall be payable for all hours worked after 6:00 P.M. up to 6:00 A.M.

- (d)(b) Overtime may be worked at any time except Sundays and holidays at the discretion of the employer; overtime to be paid for at time and one-half the employee's regular hourly wage rate. Overtime payable on the above basis for all hours worked;

1.. After 8 hours of work in any work day.

2.. Before 8:00 A.M.

- (b)(e) Employee's regular hourly wage rate is defined as the employee's straight hourly wage rate (including night work premium, when applicable) of pay in effect during overtime hours.

- (d) Overtime shall not be pyramided; that is, paid for twice for the same hour worked; thus, in calculating the overtime for any employee in any work week, any hours for which overtime is payable under one of the above provisions shall not be used for calculating overtime under any other provision.

8. Work Week:- The work week in Service Markets in cities within the jurisdiction of Local No. 262 shall be reduced from 42½ to 40 hours, effective December 2, 1957.

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9. Clean-Up Time:

- (a) Self-Service Markets: - Clean-up may be performed after 6:00 P.M. ~~and no compensation is paid for such work performed after closing.~~
- (c) Service Markets: - Customers in the meat department at closing hour shall be served; all meats will be properly taken care of and the market placed in a sanitary condition; such work not to exceed 15 minutes after closing hour and is not to be construed as time worked. Clean-up time shall not be utilized to prepare for the following day's business and shall not be cumulative from day to day. It is understood that no customer shall be served who comes into the market or meat department before or after the hours set forth in Article 5. (Market Operating Hours).

10. Article 4, Section 5 - eliminate in Service and Self-Service contracts. (INVENTOR)

11. Article 4, Section 7. - Second and third paragraphs of Self-Service contract - eliminate.

12. Article 2, Section 2, of Self-Service contract and Article 2 of Service contract. - Add to or revise as follows:

Those items which may be pre-packaged off the premises by the packer, supplier or the employer may be pre-priced off the premises.

11. Article 2. - Modify the Article in both Service and Self-Service contracts to permit the sale outside of market operating hours of fresh poultry processed on the premises, fresh pork sausage, smoked hams and smoked butts and ham slices from Self-Service cases.

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12. Frozen Specialty Items: - Modify Article 2 in Service and Self-Service contracts to provide that the employer may sell frozen fresh meat specialty items processed off the premises, but not including frozen fresh cuts comparable to the standard fresh retail cuts.

Examples of items that may be sold:

- (a) Frozen and formed (flaked, chopped or cubed) patties with or without butter or vegetables.
- (b) Frozen and formed (flaked, chopped or cubed) patties, steaks or chopettes, breaded or not breaded
- (c) Frozen and formed meat balls.
- (d) Frozen offal (liver, brains, kidneys, hearts, sweetbreads, etc.).

13. Article 2. of Self-Service contract. - Modify to provide that special service type delicatessen departments requiring manual processing of unwrapped smoked sausage, loaf meats and ready-to-eat meats can be operated in Self-Service markets with the same jurisdictional exemption as in Article 2. of the Service contract.



not to exceed 15 minutes after closing hour and is not to be construed as time worked. Clean-up time shall not be utilized to prepare for the following day's business and shall not be cumulative from day to day. It is understood that no customer shall be served who comes into the market or meat department before or after the hours set forth in Article 5. (Market Operating Hours).

10. Article 4, Section 5 - eliminate in Service and Self-Service contracts. (INVENTORIES)

11. Article 4, Section 7 - Second and third paragraphs of Self-Service contract - eliminate.

12. Article 2, Section 2 of Self-Service contract and Article 2 of Service contract - Add to or revise as follows:

Those items which may be pre-packaged off the premises by the packer, supplier or the employer may be pre-priced off the premises.

11. Article 2 - Modify the Article in both Service and Self-Service contracts to permit the sale outside of market operating hours of fresh poultry processed on the premises, fresh pork sausage, smoked hams and smoked butts and ham slices from Self-Service cases.

12. Frozen Specialty Items:- Modify Article 2 in Service and Self-Service contracts to provide that the employer may sell frozen fresh meat specialty items processed off the premises, but not including frozen fresh cuts comparable to the standard fresh retail cuts.

Examples of items that may be sold:

- (a) Frozen and formed (flaked, chopped or cubed) patties with or without butter or vegetables.
- (b) Frozen and formed (flaked, chopped or cubed) patties, steaks or chopettes, breaded or not breaded.
- (c) Frozen and formed meat balls.
- (d) Frozen offal (liver, brains, kidneys, hearts, sweetbreads, etc.).

13. Article 2 of Self-Service contract.- Modify to provide that special service type delicatessen departments requiring manual processing of unwrapped smoked sausage, loaf meats and ready-to-eat meats can be operated in Self-Service markets with the same jurisdictional exemption as in Article 2. of the Service contract.

14. Rest Periods:- Two 10 minute rest periods per day in Service and Self-Service contracts.

15. Article 8, Section 3. Modify both contracts to provide 30 day continuance of contract and a maximum of 60 day wage retroactivity.

16. Successor and Assigns Provision:- As agreed upon.

17. Right of Industry to Change and Amend Proposal at Any Time.

[fol. 174]

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANTS' EXHIBIT 43

[Handwritten Notification Received as an Offer of Proof]

AMALGAMATED MEAT CUTTERS

and D. W. of W. A.

Local 546

Special Contract Meeting Sunday November 24, 1957.

Plumbers Hall  
1340 W. Washington Blvd.

Meeting called to  
order at 2:03 P.M.

Sec. Treas. R. Emmett Kelly asked the membership for their cooperation in order to give the photographer the time to take the pictures of the Membership and the Officers of Local 546 present at this meeting.

Sec. Kelly informed the membership that this meeting was called for the single purpose of ratifying a proposed Contract for a period of two years. There are three propositions to be discussed and voted upon by the membership. The membership's vote will decide and select our contract for the ensuing two years. Sec. Kelly asked the membership to give their full attention to the meeting in its entirety, for there have been long hours of arbitration spent on the part of your negotiating committee in the past three months to bring this proposed contract to the membership. No other business will be taken up at this meeting.

Sec. Kelly then introduced our own Pres. Thomas Gorman who opened the meeting officially. Pres. Thomas Gorman, then informed the membership that Sec. Treas. R. Emmett Kelly, and our International Vice Pres., has been working until midnight for the past four nights, due to the different proposals presented by the employers, in order to bring the membership up to date on the proposed Contract as presented today. Pres. Thomas Gorman then asked Sec. Kelly to continue on with the meeting.

Sec. Kelly proceeded to introduce our guests for this meeting namely; Bob Gorman and Ray Abramson from Local 55, Frank Kacin from Local 638, George Flash and Phil Varney from Local 262, Roco Roti Int. Organizer, Frank Putrich and Bob Fitzpatrick of Local 612, Holford Harris Local 547, Executive Board of Local 546 George Pages, George Herkert, Glenn Naumann, Bus. Agents from Local 546, John Moran, Fred Nicklas, Frank Kelly, Oscar Lehmann, James Claborn who is filling Edward Peterson's place since ill and retired, and Arnold Mayer, Public Relations Director of our International Union.

Sec. Kelly informed the membership that we had a delegation from the German Trades Unions present at our meeting. Our contract meeting being the first they had observed in this country. Sec. Kelly then introduced Quirt Stuehler Treas. of German Trade Union Federation of Labor, Klaus Wust Interpreter for the delegation, and Willi Richter Pres. of the German Federation of Labor, [fol. 175] Vice Pres., International Confederation of Free Trade Unions, and Labor Member of the governing body of International Labor Organizations. Willie Richter's position in the German Labor Movement is equivalent to that of George Meany in our American Federation of Labor.

Willie Richter spoke to the membership, and his interpreter translated his speech into the English language for the membership, sentence by sentence for their benefit. Willie Richter extended the greetings from the German Federation of Labor to the members of Local 546, and stated that it was a privilege for their delegation to be present at this Contract Meeting, which affects all the members in this area. You will be presented with a Contract, it is your decision that will decide the fate for your working conditions, give it serious thought. I will not take up any more of your time. We wish you success and may your work be well rewarded.

Sec. Kelly thanked Willie Richter for his speech, and then introduced Irving Stern our International Organizer from New York, who is cooperating with Sec. Kelly in the organization of the Agar Plant. Int. Org. Irving Stern

has been at this job for 8 weeks, and is doing a very fine job. The Taft-Hartley Act will not permit a Boycott.

[Int. Org. Irving Stern greeted the membership and stated that on the way to the meeting today he passed the statue dedicating the scene of the HayMarket Massacre. This statue symbolizes a movement in Labor, where men sacrificed their lives, in order to provide better working conditions and better living conditions. In April 1914 a Charter was issued to Local 546, at that time you worked 6 days a week, from 7:00 A.M. to 7:00 P.M. five days a week, and from 7:00 A.M. to 10:00 P.M. on Saturdays, for \$10.50 per week. You could not have held this meeting today, for the Sunday before Thanksgiving in those days you were required to prepare your Thanksgiving orders, at your own time and expense. The Agar situation has been in existence for 15 years, and they have used every trick in the book to defeat the cause of labor. Recently the Agar Company has stated another campaign against Organized Labor, they found one of the men sympathetic to Organized Labor and fired him, if this condition is allowed to exist all achievements will be lost. We have gone to these people making all efforts to settle this situation, but to no avail. They are [fol. 176] now using coercion methods in order to keep their employees out of the ranks of organized labor. This will be a long term fight, if we do not receive the cooperation of all. They are determined to keep organized labor out of their plant, with the opportunity of Free Speech as it still exist in our beloved country, we are going to preach the program of:—Please Do Not Buy Agar Products, and with your support it will not be long before Agar Products will be Union Products.

Pres. Thomas Gorman thanked Int. Org. Irving Stern for his talk, and introduced our International Secretary Patrick Gorman, and asked him to preside as Honorary Chairman of the meeting after his speech. Int. Sec. Patrick Gorman stated that due to the large number of members present at this meeting with no seats, he would not delay the progress of the meeting, especially at this yearly meeting, which all of the membership is looking forward to. Local 546 is one of the finest Locals affiliated with the International and is noted for it's many accomplishments

in the progress of the Labor Movement, to continue this progress the membership was asked to have confidence in the Officials of Local 546 as they have had in the past.

International Secretary Patrick Gorman then turned the meeting over to Secretary Treasurer R. Emmett Kelly for explanation of the Contract for the ensuing year to the membership.

Sec. Kelly informed the membership that this is the largest agenda that was ever prepared for a contract meeting, in fact it numbers 44 pages and every page is of importance to the membership, and asked for their cooperation, for it is for their benefit. There were 12 meetings with the employers, in fact the meeting of Wednesday of this week started at 9:00 A.M. to 11:00 P.M., and there were Contract Proposals presented after that, wanting to alter the contract as agreed to. You will have the privilege on voting on three different proposals that will be presented to you, and your negotiating committee will make a recommendation to the membership after the three proposals have been presented to the membership. As in previous meetings Recording Secretary Glenn Naumann will read the agenda and Sec. Treas. Emmett Kelly will explain it to the membership.

[fol. 177] Sec. Kelly stated that our Credit Union has been in existence for two years, and it's progress is very good, it is a non-profit organization. Our membership to date is 850, the loans granted by the Credit Committee to date number 568, for a total of \$118,196.80. Our total Assets are \$130,848.00, total Savings \$86,474.28. We paid 3% interest on accounts in 1956, in 1957 we will pay 3½% interest on accounts, which is very good for an organization as new as ours. We are quite proud of it's progress.

Sec. Kelly then asked Recording Secretary Glenn Naumann to proceed with the agenda for the meeting, which is as follows:

The Affiliated Meat Cutters Unions, namely Locals, 189, 262, 320, 546, 547, 571 and 638, with 350 Hammond and Gary and 612 Joliet participating as observers, totaling approximately 10,000 Union Meat Cutters had their first



joint meeting as far back as May 9, 1957. The official staffs of all concerned agreed to make a survey of their respective markets to determine from the membership what the extent of our Contract demands would be. Additional meetings on this subject were held on July 10 and July 18.

Sec. Kelly informed the membership that at this point your Negotiating Committee decided that personal contact with the members, would be their best means of determining the memberships demands for the ensuing contract. This information was gathered through the Business Agents and your Negotiating Committee.

On August 20, 1957 Contract demands were presented to the employers and a joint negotiating meeting was planned for the Bismarck Hotel on September 5, 1957, at that meeting the following Companies were represented: Kroger, A & P, National Tea, Jewel Foods, Del Farm, Hillmans, I.G.A. (Table Rite), Associated Food Dealers, Wieboldts, Sure-Save, Piggly Wiggly, Goldblatts, and High-Low Foods.

Contract Demands submitted by the Affiliated Local Unions Negotiating Committee and covering Meat Cutter Locals No. 189, 262, 320, 546, 547, 571 and 638.

1. A two Year Agreement with wage increases as specified below for the first Year and with a wage re-opener. Only for the second year.

[fol. 178]

2. Time and one-half to be paid for all work in excess of Forty Hours per week.

3. There shall be two Fifteen Minute Rest Periods each Day in All Meat Departments.

4. Increase all Journeymen in both Service and Self-Service Markets to \$112.50 weekly.

5. Increase all Head Meat Cutters in both Service and Self-Service Markets to \$119.00 weekly.

6. Increase all Apprentices in both Service and Self-Service Markets as Follows: First Year \$72.00 per week, Second Year \$80.00 per week, Third Year \$88.00 per week.

7. Groups Three and Four in Local 189 to be incorporated in Group Two.
8. Whenever an employee who has been employed Six Months or longer leaves his present employment for any reason, he shall be entitled to Pro-Rated Vacation based on his months of service.
9. Increase the Vacation Schedule to include three weeks vacation for ten years of service.
10. Reinstate "Veterans Day" as a Paid Holiday.
11. Service Markets under the jurisdiction of Local 262 demand the same Forty Hour Work Week as presently in Self Service Markets.
12. Contract demands shall be subject to retroactivity at all times.
13. The Union shall have the right to supplement these demands at any time during the negotiations.

14. Successors and Assigns Clause:

This Agreement shall be binding upon the Company herein, and its Successors and Assigns and, no provision herein contained shall be nullified or affected in any manner as a result of any consolidation, sale, transfer, assignment, or any other disposition of the Company herein or by any change to any other form of business organization or by any change, geographical or otherwise, in the location of the company herein.

[fol. 179]

Sec. Kelly explained to the membership that our first demands were inflated in order to reach a compromise later. The Successors and Assigns Clause was presented for the protection of the Membership, with the idea in mind to protect the Memberships rights and benefits in the event of any consolidation or sale of business upon the part of the employer.

There were meetings held on Sept. 11, Sept. 12, and Sept. 18 at which time no money offers were made, then a \$4.00 offer for the first year and a \$3.00 offer for the second year, with a 2 year contract was made from all of

industry. Then a \$5.00 and \$5.00 offer was made from the Association only. To read this in detail would consume too much time.

On October 22, 1957 a meeting was held between the Union and the employers at 2:15 P.M. in the Bismarck Hotel, wherein the Union was to receive an answer from the employers as a result of their previous meeting on October 16, 1957. Bob Cone of National Tea Co., acted as spokesman for the employers group and presented the following Contract on their behalf:

### PRESENT CONTRACT with FOLLOWING CHANGES:

Two Year Contract expires October 3, 1959.

Service Markets, 1st year, Head Meat Cutters \$108.00, Journeymen, \$101.50, Second Year Head Meat Cutters \$112.00, Self Service Markets, 1st year, Head Meat Cutters \$112.50, Journeymen \$106.00, Second Year Head Meat Cutters \$116.50, Journeymen \$110.00. Apprentices, both Service and Self-Service Markets, 1st year 0 to 6 months \$72.00, 6 to 12 months \$75.50, 12 to 18 months \$77.50, 18 to 24 months \$80.50, 24 to 36 months \$86.00. Second Year 0 to 6 months \$75.00, 6 to 12 months \$78.00, 12 to 18 months \$80.50, 18 to 24 months \$83.50, 24 to 36 months \$89.00.

2. Female Wrappers First Year of the Contract, 0 to 12 months \$52.00, 12 to 24 months \$57.00, 24 to 36 months \$62.00. Second Year of the Contract 0 to 12 months \$54.00, 12 to 24 months \$59.00, 24 to 36 months \$64.00.

3A. Duties of Female Wrappers shall be Limited to the Following in Self Service Markets:

Wrapping and sealing, Pricing, Sealing, Labeling, Displaying and Stocking, and slicing of Luncheon Meats.

3B. No Male employee on payroll as of the Monday following ratification of this Contract shall lose his employment due to the hiring of a female wrapper. The Union shall be Notified Immediately of the Employment of Female Wrappers:

[fol. 180] 4. Article IV—Section 1 Modified as Follows:

Sub-Section A—8 hours shall constitute the basic work day which may be worked between 8:00 A.M. and 6:00

P.M. One hour for lunch whether manned by one or more than one employee, from 11:00 to 2:00.

In Self Service Departments Only—Clean up Duties may be performed after 6:00 P.M.—Provided Overtime is Paid.

b) Article IV—Sec. 4 Modify Overtime.

May be worked behind closed doors at overtime rates before 8:00 A.M. and after 6:00 P.M. and after eight hours in any one day.

c) Overtime shall not be pyramided or paid twice for the same hours worked.

In figuring overtime for any employee in any work-week any hours for which overtime is payable under any of the above provisions shall not be used in figuring overtime under any other of the above provisions.

5. Successors and Assigns Clause—O.K.

6. Modify Article 2—Both Contracts.

To permit the sale of fresh poultry processed on premises—fresh pork sausage—smoked hams, whole, half or sliced—and butts from Self Service Cases, outside of market operating hours.

7. Modify Article II in both contracts to provided the employer may sell frozen fresh meat specialty items processed off premises but not including Fresh Frozen Cuts Comparable to Standard Fresh Retail Cuts.

8. Modify Article II—Self Service Contract.

9. Two ten minute rest periods in Service Markets.

Sec. Kelly informed the membership that the above offer was made for all of industry, by Bob Cone of the National Tea Co., including the Association, with the exception of the Jewel Tea Co. Jewel Tea Co., was asked to state their position. Mr. Vorbeck of Jewel said:

They cannot go along with Industry because of the non-inclusion of Night Operation. They had requested an opinion from their Law Firm earlier in negotiations as to the legality of regulating hours of work. They were told it was clearly a violation of the Anti-Trust Laws, and could go to Court to seek an injunction or file charges of conspiracy against the Union, or refuse to sign the Contract

and sue the Union for any strike action that might result. [fol. 181] They said they want one night a week or otherwise suit will be instituted.

They further added that they will negotiate separately or otherwise other than this.

Jewel then read the following letter from their Law Firm outlining a course of action they would follow:

Sec. Kelly informed the membership that he asked Mr. Vorbeck for a copy of the letter from their law firm, in order that the membership might hear it as your negotiating committee had. Mr. Vorbeck was kind enough to grant this request, incidentally this firm is one of the best and most expensive there is in the city. The letter is as follows: from—

Winston Strawn Smith & Patterson, First National Bank Bldg. Chicago, Illinois, dated—October 2, 1957. to—Jewel Food Stores, 1955 W. North Ave., Melrose Park, Ill., Attention: E. G. Vorbeck. Gentlemen:

You have requested our opinion as to the legality of a provision insisted upon by the Amalgamated Meat Cutters Local 546, and Associated Food Retailers of Greater Chicago, Incorporated, for inclusion in a so-called Service Contract, which provides that meat market operating hours shall be 9:00 A.M. to 6:00 P.M. Monday through Saturday, inclusive. No customer shall be served who comes into the market before or after the hours set forth above, except that customers in the market at the closing hour shall be served. The same parties are insisting upon a substantially equivalent provision in a contract for so-called "self-service markets", except that meats not for human consumption, bacon, delicatessen meats, frozen poultry and frozen packaged fish may be sold at other hours. The effect of the provision is that regardless of wages, hours and working conditions, the Union and the Associated Food Retailers of Greater Chicago, Incorporated (or enough of its members to control its actions) Are Insisting that Trade in most meats for human consumption take place only within these specified hours and that meats for human consumption be withheld from the public at all other times. The result is that meat for dogs can be bought at the convenience of the buyer in the Chicago area but that meat for people



can be bought only at the times dictated by the Retailers Union combination.

It is our opinion that this restriction of trade is a clear violation of the Anti-Trust Laws.

Without going into detail, because as you know, the subject of the Anti-Trust Laws is an extremely complex one, we refer you to such cases Kold-Kist Inc., vs Amalgamated Meat Cutters, Alpha Beta Food Market vs Amalgamated Meat Cutters, Red Owl Stores, Inc. vs Amalgamated meat Cutters.

You have three courses of action open to you:

- (1) You could now file an action for declaratory judgment and, if our view are correct, secure judgment that the action of the aforementioned parties is an illegal conspiracy:
- (2) You could proceed for an injunction either separately from the declaratory judgment action or as part of it;
- (3) You could refuse to sign the contract, a strike might ensue, and you could then sue the parties for resultant damages, trebled.

There is a fourth course of action open to you, which is to suggest to the Anti-Trust Division of the Department of Justice that it conduct an investigation looking to criminal action. On the whole, we think it is better for you to be in charge of your own investigation and litigation rather than to turn it over to third parties who may not press it as promptly as you may press it yourselves.

Sec. Kelly stated that the above letter was an opinion from the Jewel Tea Law department, and this is what we call negotiating with a gun in your back, and that is exactly what your Committee went through from this point on. We were threatened on numerous occasions from this point on with Court Action, and others join the ranks of Jewel. It is up to the membership to decide today, if they want a contract without night operation, we will take our chances with Court Action, and if night operation comes to Chicago we thank Jewel Tea for it.

As you have noted up to this point Jewel Tea, has had no part of the contract as presented by the employers.

On November 1st another meeting was held with the employers at which time Mr. Vorbeck of Jewel Foods made the following proposition to the Union and covering Jewel Only.

Offer Made to Union on November 1, 1957 on Behalf of Jewel Tea Company, Inc.

Application—Contract provisions other than wage scales to be applicable to all cities in all Locals in which the Company operates Jewel Markets. Wage increases (but not wage scales) apply to all cities in all Locals in which the company operates Jewel Markets.

[fol. 183] These scales are applicable to any Market operated after 6:00 P.M. for sales of Fresh Red Meats.

Industry Offer Except As Modified As Follows:

- 1 Term—2 years.
- 2 Nights of operation—5—Monday thru Friday. Journeymen on duty Thursday and Friday—on other nights First employee called must be a Journeyman.

Sec. Kelly pointed out that through the years we have been fighting against one night a week operation, and now Jewel Tea comes along and wants five nights a week. They give us a guarantee that on Thursday and Friday Nights, Journeymen would be on duty, but on the other three nights one Journeyman would be called and the balance could be females according to their terms.

3. Female Wrappers—Wage Scale—Two Years.

0-6 months \$52.50, 6-12 months \$55.00, 12-18 months \$57.50, 18-24 months, \$60.00, 24-36 months \$65.00, after 36 months \$70.00. This comes out \$1.00 higher after the second year than the Industry Offer.

(b) Duties—To be defined in Industry Offer.

(c) Reasonable initiation fees and dues in line with wage scale.

(d) Same male employment guarantee as set out in Industry Offer.

4. Effective November 25—the workday to be changed to eight hour flexible workday to be worked between the hours

of 8:00 A.M. to 9:00 P.M.—Monday thru Friday, 8:00 A.M. to 6:00 P.M.—Saturdays—No work Sundays or Holidays.

5. Effective November 25 all Contract provisions regarding the payment of time and one-half for work before 9:00 A.M. and after 6:00 P.M. to be eliminated and the following provision substituted therefor:

(a) Night work premium in the amount of 25¢ per hour shall be payable for all hours worked after 6:00 P.M. up to 6:00 A.M. (Local 350 has time and one-half after 6:00 P.M. every day).

Sec. Kelly pointed out to the membership at this time their so-called flexible work week, which was constructed for the company benefit. They can bring you in anytime from 8:00 A.M. on, and let you put in your 8 hours irregardless of the time they called you in, and pay you 25¢ an hour extra for any time put in from 6:00 P.M. on to 6:00 A.M.

(b) Overtime may be worked at any time, except Sundays and Holidays, at the discretion of the employer, provided it is paid for at time and one-half the employee's regular hourly rate of pay as defined herein. Overtime shall be payable on the above basis for all hours worked:

(1) After 8 hours of work in any workday.

(2) After 4 hours of work on the sixth day of a work-week provided however that effective October 6, 1958 and continuing for the balance of the term hereof, overtime shall be payable for all hours worked after 40 hours of work in any work-week; and Before 8:00 A.M.

Sec. Kelly stated that in Jewel there are any amount of our people who are working 5½ and 6 days and enjoying premium pay. We made a demand for time and one-half for any work performed on the sixth day and this is the Jewel Tea Co. honest answer. The answer came from Mr. Hargrave, who stated that they did not mind paying time and one-half for work performed on the sixth day, for eventually according to their program they intended to

eliminate all work performed on the sixth day. As a consequence you would be nothing ahead, so this demand was dropped, not completely, for we did gain a point, as you will see as the meeting progresses.

For the purpose of this overtime provision, the employees regular rate of pay shall mean the employee's hourly rate (including night work premium— $37\frac{1}{2}\%$ , when applicable) of pay in effect during the overtime hours.

(c) Overtime shall not be pyramided; that is Paid for twice for the same hours worked. Thus, in calculating the overtime for any employee in any work-week, any hours for which overtime is payable under one of the above provisions shall not be used for calculating overtime under any other provision.

(d) Hours not worked on a Holiday but which are paid for under Article VI, Section I shall not be considered as hours worked for the purpose of computing overtime pay. Will not pay time and one-half after 32 hours in a Holiday Week. [fol. 185] This means the dropping of extra day rates at \$1.00 premium effective on the same date the above overtime provision becomes effective and the substitution of Sixth half-day rates at a 50¢ premium there for.

6. Reduce the work-week in all areas in which the company has operations where the work-week is now  $42\frac{1}{2}$  hours or more by  $2\frac{1}{2}$  hours effective November 18.

7. Wage scale for apprentices applicable to both Service and Self-Service markets. Effective 10-7-57: 0-6 months \$72.00, 6-12 months \$76.00, 12-18 months \$79.00, 18-24 months \$82.50, 24-36 months \$89.00. Effective 10-6-58: 0-6 months \$76.00, 6-12 months \$79.50, 12-18 months \$83.00, 18-24 months \$86.50, 24-36 months \$93.00.

8. Wage Scales for Head Meat Cutters and Journeymen, effective 10-7-57;—Self-Service Markets—Head Meat Cutters \$116.50, Journeymen \$110.00. Service Markets Head Meat Cutters \$114.50, Journeymen \$108.00. Effective 10-6-58.—Self-Service Markets—Head Meat Cutters \$121.50, Journeymen \$115.50. Service Markets—Head Meat Cutters

\$121.50, Journeymen \$115.00. (Increase applicable to Self-Service plus \$2.50 first year plus \$2.00 second year)

Sec. Kelly informed the membership that Jewel Tea Co., stated that we could accept this offer as is, but should not attempt to modify it. This offer represents an increase in wages of \$650,000 for the first year and \$1,000,000.00 increase in payroll in two years.

The combined Local Unions hoping to make their demand more acceptable to the balance of industry other than Jewel presented the following new demands modified accordingly.

1. One Year Agreement.
2. Time and one-quarter to be paid for any work performed during regular market hours—on the sixth day,
3. Two ten minute rest periods in both markets.
4. Head Meat Cutters and Journeymen shall be increased by \$10.00 weekly.
- [fol. 186] Part 2—Narrow differential between Service and Self-Service markets by \$2.50 weekly.
5. Apprentices—0-6 months \$72.00, 6-12 months \$76.00, 12-18 months \$79.00, 18-24 months \$82.00, 24-36 months \$89.00.
6. In groups 3 and 4 (L 189) 40 hour work-week time and half after eight hours and time and one-quarter on the sixth day.
7. Eliminate our demand for pro-rated vacations.
8. Three weeks vacation for 10 years service.
9. Veterans Day Out.
10. L 262 Service Markets demand 40 hour week.
11. Retroactivity—modify Section 3 of Article 8 to: 30 day continuance of Contract and Ninety day retroactivity.
12. Right to supplement demands.
13. Successors and Assigns Clause.
14. Security Clause.



15. Agree to permit Fresh Cut Up or Whole Poultry to be sold after 6:00 P.M. Union agrees further to permit certain Frozen Specialty Items to be Sold During Market Hours, (We wish to Discuss)

On November 12, the entire Industry, with the exception of the Association made a counter-proposal to the demands made by the Unions of November 1st in which they once again offered: 1.—2 year Contract. 2—Same increase \$6.00 for the first year and \$4.00 for the second year. 3—Still want night operation and females.

This offer was unanimously rejected by the Unions Negotiating Committee;

On November 15 Industry all United together with the exception of the Association and increased their wage offer to: \$8.00 for the first year and \$4.00 for the second year, but still continued their demand for female wrappers and one night operation this time to begin after the 1st year of the Contract. This is the highest offer received from the majority of industry to date.

On Wednesday, November 20th of this week, the last day of negotiations, Jewel Tea, National Tea, Hillmans, Piggly Wiggly and High-Low joined together in a proposal to the Union containing a proposition which was practically the same as tendered the Union on November 12th and 15th except that they had dropped the demand for part time wrappers.

[fol. 187] After rejecting same, the Unions then submitted their final demand.

This was the Proposal that was to be accepted by a Majority of Industry, as follows:

1. A two year agreement.
2. Wage rates, Self-Service Markets, effective 10-7-57—  
Head Meat Cutters \$114.50, Journeymen \$108.00. Service Markets Head Meat Cutters \$111.50, Journeymen \$105.00. Effective 10-6-58 Self-Service Markets, Head Meat Cutters \$119.50, Journeymen \$113.00. Service Markets, Head Meat Cutters \$117.50, Journeymen \$111.00.
- a) Self-Service Head Meat Cutters and Journeymen receive \$8.00 and \$5.00.

- b) Service Head Meat Cutters and Journeymen receive \$9.50 and \$6.00.
- c) Self-Service package increase is  $32\frac{1}{2}\text{¢}$  per hour. Service package increase is  $38\frac{3}{4}\text{¢}$  per hour.
- d) Narrows differential to \$2.00
- 3. Apprentice Wage Rates Effective 10-7-57—0-6 months \$72.00, 6-12 months, \$75.00, 12-18 months \$78.00, 18-24 months \$81.00, 24-36 months \$86.00. Effective 10-6-58—0-6 months \$75.00, 6-12 months \$78.00, 12-18 months \$81.00, 18-24 months \$84.00, 24 to 36 months \$89.00.
- Apprentice Rates apply to both Service and Self-Service Markets and Eliminate Previous \$1.00 weekly differential.
- 4. No nite operation.
- 5. No Female Wrappers.
- 6. Premium rate for  $\frac{1}{2}$  day or full day on the sixth day increased to 25¢ per hour.
- 7. The addition of Successors and Assigns Clause.
- 8. Unions permit the sale after 6:00 P.M. of the following:
  - a) Fresh Pork Sausage, —b) Cut up or Whole Fresh Poultry, —c) Smoked Ribs, Smoked Hocks, Smoked Butts, —d) Will discuss frozen specialty items like Chip Steaks, Hamburger Patties and Cube Steaks.
- 9. Add to Union Contract; two ten minute rest periods daily in both types of markets.
- 10. Effective January 1, 1958—Three weeks vacation after 10 years of service.
- 11. Market opening to remain at 9:00 A.M.—men may start at 8:00 A.M. provided overtime is paid for the extra time worked.

Sec. Kelly informed the membership that this was where they had ended up on Wednesday evening, and the Unions felt they had went as far as they could. Self. Service [fol. 188] Markets would receive an \$8.00 increase and a

\$5.00 increase. Service Markets would receive a \$9.50 increase and a \$6.00 increase, and also that long fought for 3 weeks vacation with pay after 10 years of service. At this point Sec. Kelly asked that a Poll be taken of the Employers present to determine their Acceptance of the Final Union Demand. These are people who do not want night operation, or female help and will pay the rates described. The results are as follows:

Associated Food Dealers—Yes, Del Farms Foods—Yes, National Tea Co.—A Conditional Yes, A & P Tea Co.,—Yes, Kroger Co.,—Yes, Table Rite (I.G.A.)—Yes, Goldblatts—Yes, Hillman's—Yes, Sure-Save—Yes, High-Low—Yes, Wieboldts, if Jewel is only one opposed—Yes, otherwise No. Jewel offered a flat no, to the contract that 85% of Industry had accepted. On this past Friday afternoon, Mr. Vorebeck of Jewel Tea Co., appeared at the Union Office with another proposal, covering their company alone. This is after all negotiations are ended, and the contract is being prepared for ratification by the membership. This is unethical, but it is their privilege. They have to December 3, 1957 to continue to bring in proposals, according to the terms of the contract.

Sec. Kelly asked that the new proposal by Jewel Tea be read, stating that there were a few new "gimmicks" in it, and he would explain them as they were read;

The letter was addressed to Mr. R. Emmett Kelly, Chairman Affiliated Local Unions Negotiating Committee, Covering Locals 189, 262, 320, 546, 547, 571 and 638. 130 No. Wells St., Chicago, Illinois. Dated Nov. 22, 1957.

In view of the comments made by the Unions Negotiating Committee in response to the offer made on behalf of Jewel Tea Co., Inc., National Tea Co., Piggly-Wiggly, High-Low and Hillman's on November 20, 1957, our company has decided to withdraw from that offer and to make a new proposal for submission by the Union's Negotiating Committee to the membership of the respective Locals at their meeting to be held November 24, 1957. Our detailed proposal is attached.

The highlights of our offer are as follows:

### 1. Wage Increases.

a) Journeymen and head meat cutters in service markets \$9.50 per week the first year—and \$6.00 per week the second year.

b) Journeymen and head meat cutters in self-service markets \$8.00 the first year and \$5.00 the second year.

[fol. 189] c) Journeymen and head meat cutters in self-service markets with female wrappers—\$13.00 the first year and \$5.00 the second year.

Sec. Kelly advised the membership not to get to enthused, for you haven't heard the "gimmicks", and there is a lot of them.

The wage increases for journeymen and head meat cutters in self-service markets employing female wrappers will be on an individual market basis. In other words, as soon as a female wrapper is employed in a self-service market; the contract wage scale for the head meat cutter and Journeymen in that self-service market will immediately increase \$5.00, the increase to continue in effect so long as the female wrappers are employed in that market. The employment of female wrappers is limited not only by the necessity of giving all journeymen and head meat cutters a \$5.00 wage increase upon the employment of the first wrapper, but also by the fact that no male employee in the service of the company as of the Monday following ratification of the Contract by the membership shall lose his employment due to the hiring of a female wrapper. It is still further limited by the restriction on duties which she may perform.

d) A new apprentice wage scale which will provide wage increases ranging from \$4.00 per week upwards.

2. Effective January 1, 1958, three weeks of vacation with pay after ten years of employment service.

3. New market operating hours in the Chicago Locals and Group 1 of Local 189, which will enable us to better service our customers. More specifically, our offer provides for one night of operation in the Chicago Locals to 9:00 P.M.

and in Group 1 of 189, with time and one-half payable for the hours worked after 6:00 P.M. and a continuation of the present workday; namely, from 9:00 A.M. to 6:00 P.M.

Insofar as the new Group 2 cities in Local 189 are concerned, the offer provides for six nights of operation, if desired as is now permissible in some cities in this group.

If the Contract provision prescribing the hours of market operating is not relaxed so as to permit at least one night of operation to 9:00 P.m. in all areas, then the company [fol. 190] intends to litigate the legality of this contract restriction. We shall do so with genuine regret. We urge the serious consideration of this final proposal. Very truly yours, Jewel Tea Co., Inc., signed E. T. Vorbeck, General Attorney,

Sec. Kelly informed the membership that he enjoyed the part, where they say they will take us to court with genuine regret, this will be explained later as we go through.

There was an offer made November 22, 1957 on behalf of the Jewel Tea Co., Inc., it was presented in writing so you will have to hear it.

1. Application: Locals 262, 320, 546, 547, 571, 638 and Groups 1 and 2 in Local 189.

2. Term: Two Years

3. Wages:

a) Service markets—an increase in the amount of \$9.50 the first year and \$6.00 the second year for all journeymen and head meat cutters, resulting in the following wage scales:

Effective 10-7-57—Head Meat Cutters \$111.50, Journeymen \$105.00. Effective 10-6-58—Head Meat Cutters \$117.50, Journeymen \$111.00.

b) Self-Service Markets without female wrappers: an increase in the amount of \$8.00 the first year and \$5.00 the second year, resulting in the following wage scales:

Effective 10-7-57—Head Meat Cutters \$114.50, Journeymen \$108.00. Effective 10-6-58—Head Meat Cutters \$119.50, Journeymen \$113.00.



Sec. Kelly reminded the membership that this was the new Jewel Tea Co., offer and with the comparison of figures, it is identical to the Industry Offer and the membership should not become confused.

c) Self-Service Markets with female wrappers:

Effective upon the employment of a female wrapper in a self-service market and continuing so long as a female is employed in such self-service market, the Contract wage rate for Head Meat cutters and Journeymen in that Self-Service Market shall be increased by \$5.00 as follows:

1) If said female wrapper is employed during the first contract year, the wages of the head meat cutter and Journeymen in that market for the balance of that Contract year and for the second year shall be:

First Year Head Meat Cutters \$119.50, Journeymen \$113.00, Second Year Head Meat Cutters \$124.50, Journeymen \$118.00

[fol. 191] 2) If said female wrapper is employed during the second year of the contract term, the wages of the head meat cutter and journeymen in the market shall be: Second Year Head Meat Cutter \$124.50, Journeymen \$118.00.

The rates for Head Meat Cutters and Journeymen in Self-Service Markets will revert to the following rates immediately upon there ceasing to be any female wrapper employed in said Self-Service Market. First Year—Head Meat Cutters \$114.50, Journeymen \$108.00. Second Year—Head Meat Cutters \$119.50, Journeymen \$113.00.

Sec. Kelly pointed out to the membership that this was not a sound economical offer; what they are doing is putting a \$5.00 increase on Head Meat Cutters and all Journeymen within the individual shop where a Female may be employed, this does not include apprentices. As a premium worker you budget yourself accordingly, if the Female Worker is withdrawn from the shop, your \$5.00 increase disappears, not for you alone but all in the shop who have received it. On the other hand, you may be transferred to a shop where there is no female help, so your increase is gone again, it is not a stable increase.

d) Apprentice rates in both Service and Self-Service Markets. Effective 10-7-57—0-6 months \$72.00, 6-12 months \$75.00, 12-18 months \$78.00, 18-24 months \$81.00, 24-36 months \$86.00. Effective 10-6-58—0-6 months \$75.00, 6-12 months \$78.00, 12-18 months \$81.00, 18-24 months \$84.00, 24-36 months \$89.00.

Sec. Kelly explained to the membership that this was the same Offer as Industry proposed.

A 12½¢ Hourly increase in the premium for the sixth day work and on the fifth day of a holiday week, in other words, the premium for such work is increased from \$1.00 to \$2.00 per day.

Sec. Kelly reminded the membership, that this again, was the same offer as Industry proposed.

#### 4.—Female Wrappers

a) May be employed at the following wage schedule, Effective 12-2-57 to 10-3-59—0 to 6 months \$52.50; 6-12 months \$55.00, 12-18 months \$57.50, 18-24 months \$60.00, 24-36 months \$65.00, after 36 months \$70.00

b) Duties (Wrapping (including boarding and traying) sealing, scaling, pricing, labeling and displaying and slicing [fol. 192] of luncheon meats.

c) Male employment Guarantee: No male employee on the payroll as of the Monday following ratification of the Contract shall lose his employment due to the hiring of a female wrapper; the Union shall be notified immediately of the employment of new female wrappers.

Sec. Kelly at this time pointed out to the membership that the duties of the Female Wrapper as defined in this proposal, are the present duties of our apprentices, and Journeymen, within our present contract and our ensuing contract. They can well afford to pay the \$5.00 per week for the remaining Head Meat Cutter and Journeymen within the individual establishment, for the Female Worker at \$52.50 per week is replacing Apprentices and Journeymen, and they are saving from \$19.50 to \$54.50 per individual employee, less \$5.00 per week for the Head Meat

Cutter and remaining Journeymen. They can well afford it. If they want Females let them pay equal for equal work, namely apprentice pay for this type work, and journeymen pay for their type of work, not what they offer, let them pay our scale of wages and they won't want them. Females will remove our membership from their jobs within a short space of time. They say they have a guarantee for males, it is no good, for as they open new stores, they will move the men out and the women in. The backbone of our organization has been male membership, and it should stay that way. This should be given some consideration when we come down to the final vote.

5. Effective Jan. 1, 1958 three weeks vacation with pay after 10 years of service.

Sec. Kelly reminded the membership, that again this was the same as the Offer Presented by the Industry.

#### 6. Hours of Operation:

a) All Locals except Local 189, Friday to 9:00 P.M.

b) New Group 1 of L 189: Friday to 9:00 P.M.

c) New Group 2 of Local 189 Six nights permissible to 9:00 P.M.

d) Groups 3, 3@ and 4 of Local 189: No Change in Contract.

e) No operation on Sundays or Holidays.

[fol. 193] f) A male employee must be on duty at all hours that the market is open for sale of meats.

If the Contract provision prescribing the hours of market operating is not relaxed so as to permit at least one night of operation to 9:00 P.M. in all areas, then the company intends to litigate the legality of this Contract restriction. We shall do so with genuine regret.

7. Workday: Locals 262, 320, 546, 547, 571 and 638 and Group No. 1 in Local 189.

a) Monday, Tuesday, Wednesday, Thursday and Saturday 9:00 A.M. to 6:00 P.M.

b) Friday: 9:00 A.M. to 6:00 P.M. with the employer to have the option to work male employees after 6:00 P.M. at time and one-half.

c) Employer may bring employees in at 8:00 A.M. provided time and one-half is paid for the hour between 8:00 A.M. and 9:00 A.M.

8. Two 10 minute rest periods to be given in both Service and Self-Service Markets daily.

Sec. Kelly reminded the membership that this was another repetition of the Offer made by Industry.

9. Both the Service and Self-Service Contracts to be modified to permit the sale outside of market operating hours of fresh poultry, processed on the premises, fresh pork sausage, and smoked butts, ribs and hocks, also the company to have the right to sell frozen fresh meat specialty items processed off the premises, but not including Fresh Frozen Cuts Comparable to the Standard Fresh Retail Cuts.

Sec. Kelly stated that this clause had already been agreed upon in Industries Offer, it was granted thru the neglect of our membership to protect their contract benefits.

10. The Successors and Assigns Clause as previously agreed upon.

Sec. Kelly stated that this clause had previously agreed upon by Industry.

Sec. Kelly informed the membership at this point he had only one and one half pages of the agenda left, to all of our satisfaction.

On Saturday morning November 23, at 9:30 A.M. Mr. Vorbeck of Jewel Phoned the Union Office, while Sec. Kelly was still struggling with the revised agenda to be presented [fol. 194] membership on Sunday, to request the following:

"If the proposition tendered by Jewel was rejected by our membership they wished to have the same proposition re-submitted: this time with female help only and no night operation but with the same wage increase of \$8.00 and \$5.00 for two years and \$5.00 additional for Head Meat

Cutters and Journeymen Only, Not Apprentices, wherever one or more females were employed in a market, and \$9.50 and \$6.00 for Service Markets.

Sec. Kelly stated to the membership, that he thought night operation, was the main issue of Jewel Tea, but evidently it is not, Female Help is now their primary issue, with the low labor costs involved, and night operation is secondary.

On Saturday Morning, November 23 at 10:30 P.M. Mr. Stapelton National Tea Branch Manager and Mr. Cone, Labor Director met with Sec. Kelly in the offices of our Union Attorney and stated they were joining with Jewel in their Final Offer for Night Operation and Female Wrappers. They also stated they were joining with Jewel in any Legal Action against the Union.

Sec. Kelly pointed out to the membership that we now have three propositions to vote upon, and National Tea was quick to say if they received this proposition, and had to pay \$5.00 more, they wanted both Female Help and Night Operation, Sec. Kelly promised them he would make this part of the membership vote at this meeting.

1. Majority of Industry proposal with no female—no night operation and an increase of \$8.00 and \$5.00 for two years in Self-Service Markets and \$9.50 and \$6.00 in Service Markets.

2. Jewel and National proposal for \$8.00 and \$5.00 for two years with night operation and five dollars additional for Head Meat Cutters and Journeymen wherever females are employed.

The alternate Jewel offer of \$8.00 and \$5.00 for two years with \$5.00 additional for Head Meat Cutters and Journeymen, No Apprentices, wherever Females are employed in the market. (This Alternate offer Does Not Include National Tea).

Sec. Kelly stated that we are coming down to the final part of our meeting, where your Negotiating Committee makes a recommendation, and he wants the membership [fol. 195] thoroughly understand the 3 propositions, they are to vote upon, so that next week we wont find some Em-



ployer in the Union Office, complaining we were not fair in the presentations of these propositions to the membership for their vote. There are 3 propositions.

1. Majority of Industry offer, with no female help and no night operation, and an increase of \$8.00 and \$5.00 for two years in Self-Service Markets and \$9.50 and \$6.00 in Service Markets.

2. Jewel and National proposal with the same wage scale as above for two years with night operation and \$5.00 additional for Head Meat Cutters and Journeymen wherever females are employed.

3. The alternate Jewel offer with the same wage scale as above for two years, with \$5.00 additional for Head Meat Cutters and Journeymen, No Apprentices, wherever Females are employed in the market. This Alternate offer Does Not Include National Tea.

Sec. Kelly informed the membership that your negotiating committee recommends the first proposition without night operation or female help and suggest you vote favorably on it.

Honorary Chairman Patrick Gorman informed the membership that they have heard the recommendations of their negotiating committee, and asked that the membership give their names when making a motion or seconding one, for he cannot recognize them from the platform.

There was a motion made by Bro. James Malone and seconded by Bro. Gene Heiland that the membership accept proposition No. 1, as presented by the Negotiating Committee, as their contract for the ensuing two years. There was no comment on the question of the Motion. This motion was passed by a majority "AYE VOTE" of the membership. There was one "NAYE VOTE".

Sec. Kelly asked the membership not to leave for we have 3 very important things that have to be done before we are finished. Sec. Kelly then thanked the membership for their confidence in their Negotiating Committee.

Sec. Kelly stated that your negotiating committee recommends you vote against female help and night operation.

Honorary Chairman Patrick Gorman informed the membership that they heard the recommendation of their Negotiating Committee on proposition No. 2 and asked their pleasure.

There was a motion made by Bro. Bill Swoda and seconded by Bro. Tony Morrello that we vote against proposition No. 2 with Female help and Night Operation. There [fol. 196] was no comment on the question of the motion. The motion that we vote Against Female Help and Night Operation was passed by a unanimous "AYE VOTE OF THE MEMBERSHIP".

Sec. Kelly stated the due to the law suit we are facing, on the part of the Jewel Tea Co., this recommendation he will read so there are no mistakes. Your negotiating committee recommends you vote against Jewels alternate proposal for female help only, because of the low wages offered, and their attempt to undermine our wage standards.

Honorary Chairman Patrick Gorman informed the membership that they heard the recommendations of their Negotiating Committee and asked their pleasure.

There was a motion made by Bro. Ray DeBeaver and seconded by Bro. Tony Kessler that we vote against Jewels alternate proposal for female help only. There was no comment on the question of the motion. The motion that we vote Against Jewels Alternate proposal for Female help only was passed by a unanimous "AYE VOTE OF THE MEMBERSHIP".

Bro. William Bartell made a motion that the unfinished portion of our Contract be left in the hands of our Negotiating Committee.

Sec. Kelly pointed out to the membership that this was a very good motion, for we are bound to entertain any proposals that may come into our office between now and December 3. This motion gives the Committee, without calling anymore meetings of this kind, the power to tell them we have a contract, and that makes it a lot easier, on Sec. Kelly.

Honorary Chairman Gorman restated Bro. William Bartell's motion that the unfinished portion of our Contract be left in the hands of our Negotiating Committee. This motion was seconded by Bro. Heiland. There was no comment on the question of the motion. The motion was passed by a unanimous "AYE VOTE" of the membership.

Sec. Kelly informed the membership that he was about to ask them for something, that he had never presented to them in the past 27 years he has been with the organization. We are to vote by secret ballot on a strike against the National Tea and the Jewel Tea Co., in the event our Contract demands are not enforced in their organizations. As we stand at the moment, we have a contract, ratified by the membership today, with 85% of Industry. Sec. Kelly. [fol. 197] stated that at the moment we don't have a contract with National Tea or Jewel Tea Co., as Secretary it is his duty to come prepared for situation of this nature. He had printed in advance Secret Ballots, which are self explanatory, just put a check mark on it yes or no. Please don't leave your seats until you have voted, for the total of the vote is very important. We don't anticipate a strike, but it will strengthen the hand of your negotiating committee, when we return to the people we have to meet.

Sec. Kelly asked the membership not to leave until they have cast their ballot, the committee members will pass the ballots to the membership and there are ballot boxes on both floors. Sec. Kelly suggested that the Chairman of the meeting appoint tellers, and observers for the counting of the ballots. He also announced for the interest of the membership, that by acceptance of the contract today, there are 8 weeks retroactive pay due to all members working on Union minimum wage scale. After casting your ballot there will be no necessity to remain, for the counting of the ballots will take some time. Sec. Kelly stated that he would let the membership know by letter the outcome of the strike vote.

Honorary Chairman Patrick Gorman suggested that Pres. Thomas Gorman take over the meeting for the appointing of the tellers to count the strike vote.

Pres. Thomas Gorman asked for ten volunteers to act as tellers for the strike vote, and asked them to give their names to the Recording Secretary. He thanked the membership for their cooperation, and stated they may leave as soon as they cast their ballot.

The tellers and Counters for the strike ballot were Brothers, Robert Kennedy, John Quarantallo, Harry Pointif, David Prefer, Casimir Kania, Dennis Galion, Richard Glitz, S. A. Keyston, Glen Evans, Ray Okonski, Louis Blatnick, Herman Mau, Norm Pyeatt, Tony Ferrar and Miller. The count of the strike ballot was 2253 ballots in favor of a strike against Jewel and National Tea Co., and 98 not in favor of a strike, and 7 blank ballots.

Pres. Gorman stated there being no further business, after the casting of the strike ballots by the membership, the meeting would be adjourned.

/s/ GLENN J. NAUMANN  
Recording Secretary

[fol. 198]

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
DEFENDANTS' EXHIBIT 44

[Handwritten Notation—Received as an Offer of Proof]

AMALGAMATED MEAT CUTTERS

and B. W. of N. A.

Local 546

Special Contract Meeting Sunday December 13, 1959.

Plumbers Hall  
1340 W. Washington Blvd.

Meeting called to  
order at 2:05 P.M.

Sec. Kelly asked the membership to rise in order to give the photographer the opportunity to take the pictures of the Membership and Officers present at this meeting.

Sec. Kelly then called upon Bro. George Dunlap a member of Local 546, who is a Scout Master of Boy Scout Troop 785 from Blue Island. Boy Scout Troop 785 then Posted the Colors for the meeting and led the Membership

in the Oath of Allegiance to the American Flag. The Troop was then asked to sit with the Officers on the platform.

Sec. Kelly informed the membership that this meeting was called, for the single purpose of ratifying the proposed Contract, for the ensuing two years. There will be no other business discussed at this meeting.

Sec. Kelly then introduced our own Pres. Thomas Gorman who opened the meeting officially.

Pres. Gorman then introduced Sec. Kelly as one man who has been working extremely hard during the course of the Contract Negotiations, and might have been tired at the opening of the meeting, but he still is the Champion. Pres. Gorman then asked Sec. Kelly to continue on with the meeting.

Sec. Kelly explained to the membership, that ordinarily we have a larger group of Officials on the platform, but this year, the majority of the Locals are holding their own Contract Meetings on the same day. Sec. Kelly then introduced Ray Abramson and Bob Gorman from Local 55, Kermit Ray and Hal Summer from Local 350, Harold Rosa and George Flosi from Local 262, John Hackney from Local 547, our International Officers Pres. Jack Lloyd and Sec. Pat Gorman, Local 546 Executive Board George Pages and George Herkert, Recording Secretary Glenn Naumann, and Business Agents Fred Micklas, Frank Kelly and James Claborn. Sec. Kelly then called upon our International President Jack Lloyd to say a few words to the membership.

Pres. Jack Lloyd thanked the membership for the opportunity of appearing before the membership to say a few words. He explained to the membership the various departments in our International Office, which helped the Local Unions plan their negotiations for their future contracts. [fol. 199] Your division is the Retail Division, and planning negotiations for this contract started early in the year. The different Local Unions meet with one another at their District Meeting with the International Vice Pres. in charge of the District, and he in turn meets with all the International Vice Presidents at the International Office. These planning meetings continue up to the time the Contracts are settled,



so the membership may receive the best contract possible, under the conditions they have to contend with. The employers this year did not think our membership should receive an increase in wages, but your planning committee thought they should. He stated that the membership should be proud of their Officers and their Negotiating Committee, for the job they have done will set the pattern for many a Local Union throughout the country, and complimented the membership on being one of the largest Local Unions in the International Union. He invited the membership to visit the International Office, and wished everybody a Merry Christmas and a Prosperous New Year.

Sec. Kelly thanked our International President Jack Lloyd for his talk, and called upon our International Secretary Pat Gorman for a few words.

Sec. Gorman informed the membership that with the amount of the membership standing, he would be very brief with his talk. This has been a hectic year for the trade union movement, due to the laws that have been , and the investigations by the government in organized labor, all because a few labor leaders have not been fair to their membership. Your International Office is quite proud of it's record, for it is clean and the investigations have been few. The Steel Workers are an unfortunate group for they have been on strike for 116 days and may have to go out again. Your Union had the unfortunate task of declaring a strike on Swift & Co., which lasted 7 weeks, but we came through with flying colors. He complimented the membership for the calm judgment they have always had in the past at their contract meetings, and the respect for their officers, and was sure it would be present today for the ratification of this contract. He thanked the membership for this opportunity to talk to them, and wished them all a Merry Christmas and a Happy New Year.

Pres. Tom Gorman thanked our International Sec. Pat Gorman for his wonderful talk, and complimented him on the many honors that have been bestowed upon him as a [fol. 200] great humanitarian, and a great Labor Leader in the past year, and asked him to preside as Honorary Chairman for the meeting.

International Sec. Gorman thanked Pres. Thomas Gorman, and stated that this was about the 35th year that he has been acting as Honorary Chairman. He then turned the meeting over to Sec. Kelly for explanation of the Contract to the membership.

Sec. Kelly informed the membership of the Credit Union, which has been of benefit to quite a few of the memberships families, and asked the Recording Secretary to read a report on it's progress.

Four year progress of Credit Union., opened Oct. 24, 1955.—Non-profit. Our membership to date is 936. Loans granted by Credit Com., to date 1,149 for a total of \$397,062.92. Total Assets \$140,781.72. Total in Savings Accounts to date \$123,823.64. Interest Paid 1957-58-59 is 3½%.

This is your credit union, it has helped a lot of people, the interest rate is good, the entire membership is invited to become share-holders. The credit union has not advanced as it should—think about it.

Sec. Kelly explained to the membership, that this meeting has a single proposition to discuss, to ratify a proposed contract for 2 years. As in the past the membership will vote on it, after it has been explained by Sec. Kelly and read by Recording Secretary Glenn Naumann. Sec. Kelly asked the membership to listen and vote wisely. He then asked the Recording Secretary to proceed:

The combined Meat Cutter Locals 7 in number, namely Locals 189, 262, 320, 546, 571, and 638 with Local 350 of Hammond and Gary and 612 of Joliet participating as observers, comprising in excess of 10,000 union meat cutters, held their first joint meeting May 28, 1959. Prior to this time, the Executive staffs of all Locals had been making a personal survey of their respective meat markets to determine from the membership what our contract demands would be. Two additional joint Local meetings were held for this purpose on June 18th and June 23rd.

Sec. Kelly informed the membership, that each Local Union through it's representatives have contacted the membership, in order to determine what they need most in the

way of a contract for the ensuing two years. Through this survey the Local Unions hold a group of meetings, together, and through the process of elimination select the most important demands for the benefit of the membership.

[fol. 201] On June 25th final demands were prepared. The employers had previously been notified of contract reopening on June 4th and on June 29th were advised again of our intention to formally present demands on July 9th to all Employers and at the same time.

This was done and the first official contract session was held at the Bismarck Hotel on July 21st, at which time the Unions offered a full explanation of our contract proposals.

The following employers were present in the opening meeting and this list was to continue growing in size with each successive meeting:

Palace Cash Markets, Associated Food Retailers,—the Independent Association, Hillmans, Jewel Food Stores—also representing Good N' Handy, Wieboldt & Co., The Kroger Co., Piggly Wiggly Stores, Eagle Food Stores, Wallys Super Marts, Motte's Certified, A & P Stores, National Tea Co.—also representing Del Farm Stores, and Sure-Save Food Marts.

Sec. Kelly explained to the membership, that your negotiating committee, had served notice to the employers group 2 months ahead of the normal time. There were only 12 members present from the employers committee at this time, but by the time meetings progressed this group grew in number to 25, and they were all major employers. The meetings grew to be long drawn out affairs.

The following demands were submitted by the Affiliated Local Union Negotiating Committee.

1. A two year agreement.
2. Whenever an employee who has been employed 6 months or longer leaves his present employment for any reason, he shall be entitled to pro-rated vacation based on his months of service.
3. In place of Victory Day holiday as shown in contract, all employees shall have as an additional holiday, either his birthday or his anniversary date.

4. Establish an overall company seniority clause.
5. Regardless of any pending litigation, the terms of the new two year agreement to remain the same until its expiring date.
6. Establish Pension Plan.
7. Establish Health and Welfare Plan.
8. Vacations: Four weeks after 15 years' service.
9. Eliminate Section 9 of Article 7 from Self-Service Agreement.
10. Add "pricing on the premises" in Self-Service Contract [fol. 202] tract, Article 2, Section 2, (a part of our work that through a typographical error had been left out of our Self-Service Contract two years ago.)
11. Add "Jury Duty Clause" covering pay for time lost.
12. In local 189, establish 40 hour work week in Groups 3A and 4 and time and one-half after 6:00 P.M.
13. Employer will compensate employee up to three full days for immediate family funeral leave.
14. Establish clause covering "full pay for injuries on the job until compensation takes over" and delete Section 3, Article VI in existing contract.
15. Equalize Self-Service and Service wage rates.
16. Increase all Journeymen and Head Meat Cutters in Self-Service Markets.—1st year—\$7.50 per week. 2nd year—\$6.00 per week. Increase all apprentices: 1st year, 0 to 6 months \$75.00, 6 to 12 months \$79, 12 to 18 months \$84, 18 to 24 months \$89, 24 to 36 months \$94. 2nd year, 0 to 6 months \$75, 6 to 12 months \$81, 12 to 18 months \$87, 18 to 24 months \$92, 24 to 36 months \$97. Corresponding increases for extra work, or work on the sixth day.
17. The Affiliated Local Unions reserve the right to amend these demands at any time during the negotiations.

Later in the negotiations, because of their importance, the following two demands were added to the original list.

1. All apprentices who attend the full meat training course being conducted in the Washburne Trade School and who receive a Certificate of Completion shall be classified as journeymen at the end of 2½ years of apprenticeship and shall be entitled to the journeyman rate of pay. School classes are held 48 weeks per year. The above described students must attend a total of 35 weeks, one day each week and 8 hours per day.

2. Lie Detector Tests: No employee who is a member of the Meat Cutter's Union may be requested to take a lie detector test without the Company having first notified the Union of such a request, and, secondly, having had a joint meeting between the Union, the Employer and the member in question.

Sec. Kelly explained to the membership that the above were the Unions demands, which were self explanatory. The two at the end are important demands, for the apprentice today does not receive the proper training, in the market, and for his own benefit, and the benefit of the trade he should attend the school. The Lie Detector Test Clause was put in for the memberships protection, for they are being used more frequently today, more than they ever have been, by the major employers. This is for the memberships protection, and it is not recognized by law. A member does this for the protection of his job, and it is not necessary, some of our members have been talked into signing statements after a lie-detector test, and a signed statement is recognized by the courts, then you are in trouble. Remember consult your Union Officials before taking a Lie Detector Test, for your own protection, you have rights protect them.

From the date of July 21st, when we had our first joint meeting, there followed a series of meetings with the Employers group with absolutely no progress of any kind being made. We had meetings on: August 18th, August 31st, September 9th and September 25th.

Sec. Kelly informed the membership, that in all of these meetings, there was nothing accomplished. We then asked for meetings on 3 consecutive days; namely September 28,



29 and 30th, hoping, if we could get the employers together for 3 consecutive days something might be gained. This was denied. During all the meetings, only one offer was made, to continue the same contract for another year. We then sent the first letter to the membership, explaining to you the 60 day extension clause, contained in our contract protecting the memberships right for negotiations, and the clause protecting the membership for retroactive pay. There being nothing accomplished, meetings were recessed to November 2.

On November 2nd, your Negotiating Committee met the Employers for the seventh time, and met the same reception they had received in all previous meetings. They refused again to discuss Union Contract, we indicated that we were waisting each others time, and asked for 3 consecutive meetings on December 1, 2, and 3, and for the first time they agreed, we met as of that time.

On Tuesday, December 1st, in the first of four consecutive meetings and with 18 employers on the committee, your Negotiating Committee was for the first time able to make progress. The Employers first wished to talk about a list of so called Union restrictions that they had presented earlier.

Sec. Kelly explained to the membership, that this list of restrictions, was one of the first things, the employers placed in their hands. In reality they are not restrictions, [fol. 204] but safeguards, for the protection of the membership. It is interesting to note, that this is the first time in the negotiations up to date, that female wrappers, are mentioned, namely in their list of restrictions,—why we do not know. They asked us to do something about the following list of restrictions.

#### 12 Restrictions in the Contracts and Practices of Chicago Meat Cutter Locals:

1. Restrictions on the hours when a market may be open.

Sec. Kelly interrupted at this point, and questioned the membership, if there was any change in the memberships minds, as to night operation, or the sale of meat after 6

P.M. for it would make it a lot easier on your Officials if they did. The membership very emphatically, and loudly, stated No they did not want night operation, or the sale of meats after 6 P.M. Sec. Kelly stated that is all he wanted to know, and asked the Recording Secretary to continue to read the list.

2. Restrictions affecting productivity and hence tending to increase payroll costs.

A. Restrictions prohibiting the use of a fully automatic wrapping and packaging machine.

B. Restrictions which cause inflexibility in the use of the work force.

1. The fixed workday of 9 A.M. to 6 P.M.

2. The penalty overtime premium for work before 9 A.M. and after 6 P.M.

3. The requirement that inventory be taken during market operating hours.

C. Restrictions on the character of the work force.

1. The prohibition against the use of females in market work—whether as meat clerks, wrappers or limited to delicatessen operations—through the omission from the contract of a wage scale for female clerks comparable to wage scales for females for comparable work.

2. Prohibitions against the use of part-time apprentices.

3. Prohibitions against the use of clean-up boys at less than apprentice wage rates.

4. Too small a ratio of apprentices to journeymen.

D. Restrictions requiring all processing to be performed on the premises.

1. The contract requirement that all retail cuts of fresh meats be cut, prepared, fabricated and packaged on the premises.

2. The contract requirement that frozen fresh meats be [fol. 205] processed, that is be prepared and frozen on the premises.

3. The requirement existing in *practice*, but not by contract, that all meat products be priced on the premises.

*Exceptions:* Delicatessen meat products sold by service market operators, being exempt from the Union's jurisdiction, may be prepriced off the premises.

Sec. Kelly explained to the membership, if we were to grant the employers all of these restrictions, it would take away from the membership, the protections, it took them 40 years to gain. These are what make your job sure, and safe. If we were to eliminate all the protections they asked for, we would be in the same position as the steel industry. They did not strike because of money problems, it was a question of work rules. They may take their second strike for the same reason, that is why your Officials want to keep these so-called restrictions, to protect your job.

The unions then recessed and decided to scale down their demands so to force the first bona fide counter-proposal from the employers. We had the right to renew our demands, some of our demands were inflated for compromise reasons. Upon presenting lowered demands, the meeting was adjourned to the next day.

On Wednesday, December 2nd, the chairman of the Employer's Group made the first legitimate offer as follows, for the entire industry, that we had received to date.

The old contract with the following changes:

1. Inclusion of a plan for wage continuation for employees injured on the job so that he would be compensated on a basis of 60% of his wage up to a maximum of 5 days within the 7 calendar days following the accident.

Sec. Kelly informed the membership, they turned this down, for they received a better offer later, had we accepted this offer, it would mean a maximum of \$45 for apprentices and \$67 for journeyman for this time.

2. Funeral leave as proposed by the Union with one addition: "provided the employee attends the Funeral."

Sec. Kelly called the memberships attention to the above, imagine this—this is what we had to contend with, they are very trusting people.

[fol. 206] 3. Removal of all restrictions on use of equipment.

4. Provision for a completely flexible work day, 7 A.M. to 4 P.M.—8 A.M. to 5 P.M.—9 A.M. to 6 P.M.

Sec. Kelly explained to the membership, that the Officials have been thinking along these lines, but not a 7 A.M. start as suggested here: The membership will be given the opportunity to vote on the new proposal it is for their own benefit. It will eliminate a lot of chiseling by the membership for the employers benefit.

5. Elimination of union jurisdiction over sausage and delicatessen items where sold on a service basis in a self-service market.

Sec. Kelly informed the membership, that this demand, was a Jewel Tea request. This would eliminate Union Jurisdiction over the delicatessen department, and take the members away from the Amalgamated and put them in the Company Union. We don't want this to happen, and this proposal was turned down.

6. Elimination of all requirements for pricing on the premises.

7. Insertion of a firm, no strike—no lock-out clause for the term of the contract.

8. Elimination of the 60 day extension and 90 days retroactivity clause from both contracts.

9. Elimination of all restrictions on market operating hours.

Sec. Kelly explained to the membership that the last demand, was a Jewel demand. He was told by their attorneys it had to be presented to be consistent with the court suit, you will notice it appears with each offer. Now for the first wage offer it's a beauty.

10. A 3 year contract. Increase Head Meat Cutters \$2 per week for each year. Increase Journeymen \$2 per week for each year. Apprentices 0 to 6 months none, 6 to 12 months \$1 per week for each year, 12 to 18 months \$1 per

week for each year, 18 to 24 months \$1 per week for each year, 24 to 36 months \$1.50 per week for each year.

Sec. Kelly informed the membership that this was the employers first offer. Your committee accepted the Funeral Leave clause, at least they accomplished something. They rejected all others. The meeting was adjourned, till the following day Thurs., December 3rd.

[fol. 207] On Thursday, December 3rd, the Unions met with the largest Employer Committee to date, 23 employers, and submitted a compromise proposal to them, as follows:

1. Two Year agreement.
2. Pro rata vacation pay.
3. Health & Welfare: (2 parts)
  - a. In the case of those employers not presently furnishing a Health & Welfare program for their meat employees, that they make a \$14 monthly contribution to install such a program.
  - b. In the case of those employers having such a plan where the employee contributes in whole or part, the Union demands said plan be offered that meat employee, cost free.
4. Vacations: 4 weeks after 20 years.
5. "Pricing on the premises" clause to be written in.
6. Jury Duty pay for time lost.
7. Funeral Leave (as agreed).
8. Injury clause providing for 4 full days pay, including pay for day of injury, in the first 7 calendar days following the accident.
9. Equalize service and self-service wages: \$1 weekly—first year, \$1 weekly second year.
10. Increase all Journeymen and Head Meat Cutters: first year \$6 weekly, second year \$5 weekly. Apprentice starting rates to remain the same. Proportionate increases to be agreed upon for all other apprentices classifications. Corresponding increase for extra work.



11. Regarding apprentice training—Unions wish to discuss.

12. Regarding Lie Detector Tests—Unions wish to discuss.

13. Time and one-half to be paid for all work in excess of 40 hours in any one week.

Sec. Kelly explained to the membership, they had altered their wage demands at this time, and were told by the employers, they could get a Health & Welfare Fund or a Wage Increase but they could not get both. It was decided that a Health & Welfare Fund, would only benefit a minority of the members, and it would be to the benefit of the majority of the members to strive for as large a Wage Increase as could be had. Jewel Tea Co., was the chief objector, in refusing to pay the full cost of the Health & Welfare Fund now in operation by the company, stating that if they paid it for the Meat Cutters they would have to do it for their entire organization.

[fol. 208] Late in the afternoon of December 3rd the Employers presented another new proposal to the Union in which they-proposed the highest wage offer they had made to date.

1. Two Year Contract.
2. Jury duty clause agreed for first time.
3. Funeral Leave clause agreed.
4. On the injury clause, still preferred their own, but ours was subject to discussion.
5. They wanted elimination of equipment restriction.
6. Wanted the flexible work day.
7. Insertion of a No-Strike clause.
8. Eliminate Union jurisdiction of sausage and delicatessen items.
9. Removal of pricing on premises.
10. Wages: Self-Service Markets: Head Meat Cutters and Journeymen—1st year \$4 weekly, 2nd year \$3 weekly.

**Wages: Service Markets: Head Meat Cutters and Journeymen—1st year \$5 weekly, 2nd year \$4 weekly.**

11. Restrictions to be removed on market operating hours.

Sec. Kelly stated, your Negotiating Committee, realizing they were making some progress for the first time, decided to drop their demand for a Health & Welfare Fund, hoping to bring up higher the wage offer of the employers, still keeping most of our demands. We returned to our original wage demands of \$7.50 and \$6.00 for a two year contract. The employers withheld their answer and asked for adjournment until Friday December 4th.

On Friday, December 4th, the Employers went into a closed session and spent 5 hours together before presenting their answer to the Union proposal of Thurs., December 3rd. When they did, it was telephoned to the Union Office, where the Union Committee had been in conference. The Wage offer in the following proposal has been increased to a new high.

The following represents Employer proposal of Friday, December 4th.

1. 2 year agreement.
2. Flexible work day based on work hours of 8 A.M. to 5 P.M. and 9 A.M. to 6 P.M.
3. Agree to Jury Duty clause.
4. Agree to Funeral Leave clause.
5. Injury clause as proposed by Union.
6. Eliminate restriction on equipment.

[fol. 209] 7. Agree to Union plan for No-Strike—No-Lockout clause with an exception on the sale of meat.

8. Wages: Service Markets: Head Meat Cutters & Journeymen—1st year \$5 per week, 2nd year \$5 per week.

Wages Self-Service Markets; Head Meat Cutters & Journeymen; 1st year \$4 per week; 2nd year \$4 per week. Proportionate increases for Apprentices.

>Sec. Kelly explained to the membership, again they were moving forward, but the Unions rejected the offer stating it was inadequate.

At 8 P.M. on Friday, December 4th the Union Negotiating Committee made their final proposal that eventually led to the proposed settlement in our last meeting to be held on Tuesday, December 8th, that is just this past week. The following is the proposal presented at that time.

1. 2 year contract.
2. Jury Duty clause agreed.
3. Funeral Leave clause agreed.
4. Union drops pro-rata vacation demand.
5. Wages: Self-Service Markets: Head Meat Cutters & Journeymen—1st year \$6 per week, 2nd year \$6 per week. Proportionate increases for apprentices, extra work and work on the 6th day.
6. In Service Markets, equalize rates, \$1 each year.
7. Injury on the Job clause, as agreed.
8. In Local 189, effective October 1960, work week hours to be reduced from 42½ to 40 hours. Method of reduction to be mutually worked out. To cover Groups 3, 3A and 4.
9. Four weeks vacation after 20 years.
10. Pricing on premises clause to be included in Self-Service Contract.
11. Unions grant right to use automatic wrapping machines.
12. Unions rejects Employer request for flexible work day.
13. Regarding market operating hours—the Unions are willing to entertain offers on this subject and bargain accordingly.
14. Unions would like to discuss the apprentice-training problem.

15. Unions will agree to a No-Strike—No-Lockout clause, with single exception covering their right to enforce the sale of meat as prescribed in the contract.

Sec. Kelly informed the membership, with this proposal [fol. 210] the meeting was adjourned and final meeting was scheduled for Tuesday, December 8th.

While the two groups were conferring separately on Dec. 8th, the Unions had a proposal, again by telephone, from the Employers. They again offered the fringe benefits previously agreed and if the Union would grant them:

1. Automatic Wrapping Equipment.
2. Flexible Work Day.

They Would Increase Wages as follows:

Service Markets: Head Meat Cutters & Journeymen—1st year \$6 per week.—2nd year \$5 per week. Self-Service Markets: Head Meat Cutters & Journeymen—1st year \$5 per week.—2nd year \$4 per week.

Sec. Kelly explained to the membership that this was the highest offer made by the Employers to this date, but the Unions agreed the wage increase was not enough for what they wanted, and they rejected it.

It was then suggested a final joint meeting begin.

The final meeting at the Bismarck Hotel then produced the following Employer offer and is the basis on which the membership of Local 546 will vote to accept or reject the new contract.

The renewal of the old contract for two years, with the following changes.

Sec. Kelly asked the membership to listen attentively, for this is the final offer they will vote on today.

1. A Jury Duty clause providing for the difference in pay for any time lost.
2. A Funeral Leave clause covering three days pay for time lost as a result of a death in the immediate family.
3. An injury clause covering pay up to four full days for "on the job" injuries.

4. The Union will eliminate the restriction on automatic packaging equipment.

5. Unions will include a No-Strike—No-Lockout clause excepting on violation of meat sales.

6. Employers will insert Pricing clause in Self-Service contract.

7. Employers will equalize wage rates in Service and Self-Service Markets.

8. Provision will be made for a flexible work day, covered between the hours of 8 A.M. to 5 P.M. or 9 A.M. to 6 P.M. Starting time will be rotated among market employees and [fol. 211] will become effective January 4, 1960. Overtime to be paid for any work over 8 hours.

9. Wages: Self-Service Markets—Head Meat Cutters & Journeymen—1st year \$5.50 per week, 2nd year \$5.50 per week.

Wages: Service Markets—Head Meat Cutters & Journeymen—1st year \$6.50 per week, 2nd year \$6.50 per week.

Wages: Apprentices—1st year of contract: 0 to 6 months—\$75 per week, 6 to 12 months—\$79 per week, 12 to 18 months—\$84 per week, 18 to 24 months—\$88, 24 to 36 months—\$93 per week. 2nd year of contract, 0 to 6 months—\$75 per week, 6 to 12 months—\$81 per week, 12 to 18 months—\$87 per week, 18 to 24 months—\$91 per week, 24 to 36 months—\$96 per week.

Proportionate adjustments on extra and sixth day to be worked out if approved.

Sec. Kelly informed the membership, that proposal No. 8 is the Flexible Work Day, that had been talked about, for many years the Unions had fought against it. Now it is a necessity for the benefit of the membership, and the Employer. It will give the membership the opportunity of setting up their shop before opening, if they need it, and if they work after 5 P.M. they are assured of overtime pay, the Unions are advocating the Flexible Work Day, for the benefit of the membership.



Sec. Kelly stated that under this proposal, the new minimum rates would be for Service Markets, Head Meat Cutters \$124, Journeymen \$117.50, effective Oct. 1960, Head Meat Cutters \$130.50-Journeymen \$124. Self-Service Markets, Head Meat Cutters \$125, Journeymen \$118.50, effective Oct. 1960 Head Meat Cutters \$130.50, Journeymen \$124. This contract will equalize wage rates, something the Union has been fighting for, since Self-Service came to Chicago.

Apprentices will range, from a minimum of \$75 to a maximum of \$96 weekly.

Under the Chicago Cost of Living Index, the cost of living has risen since last Oct. 1958 to Oct. 1959 1.6%. Based on the journeyman rate of \$113, we would be entitled to an increase of \$1.82 per week. We did not use the Index for this reason. We talked on the increased standard of living.

Under this proposal, the Contract is retroactive to October 3rd. There is 10 weeks back pay due all members, for example Head Meat Cutters & Journeymen in Self-Service Markets have \$55 coming and in Service Markets, Head Meat Cutters and Journeymen have \$65 coming.

[fol. 212] Sec. Kelly informed the membership that their Union Negotiating Committee, feel they have done their level best, actually he did not think it possible to secure as large an increase as being offered the membership in this proposal, it represents a package increase over the 2 year contract of 30¢ an hour. We are now the highest paid Meat Cutters Local Union in the United States with the \$124 being paid our Journeymen in October of this year. We have the same increase in our Self-Service Markets of \$5.50 and \$5.50 as Kansas City received and had to take a 14 day strike to get it.

Your Union Negotiating Committee feel they have done their best, and Sec. Kelly as Chairman of the Negotiating Committee, recommended to the Membership that they accept the Employers Proposal.

Honorary Chairman Patrick Gorman informed the membership that they had heard the report and recommendation of the Negotiating Committee, and as Honorary Chairman asked for a motion to accept or reject the recommendation of the Negotiating Committee.

There was a motion made by Bro. Robert Rankin that the membership of Local 546 accept the recommendation of the Negotiating Committee. This motion was seconded by Bro. John Denk. There was no comment on the question of the Motion. This motion was passed by a unanimous "AYE VOTE OF THE MEMBERSHIP".

Honorary Chairman Patrick Gorman, then asked for a motion to adjourn the meeting. There was a motion made by Bro. Michael Hurley that the meeting Adjourn. This motion was seconded by Bro. Milton Strom and passed by a unanimous "AYE VOTE OF THE MEMBERSHIP."

The Meeting Adjourned at 3:20 P.M.

Sec. Kelly then wished the membership A Merry Christmas on behalf of the Local Officers.

/s/ GLENN J. NAUMANN  
RECORDING SECRETARY

[fol. 213]

IN UNITED STATES DISTRICT COURT.  
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEFENDANTS' EXHIBIT 45

AMALGAMATED MEAT CUTTERS  
and B. W. of N. A.  
Local 546.

Special Contract Meeting Sunday November 26, 1961.

Plumbers Hall  
1340 W. Washington Blvd.

Meeting Called to  
order at 2:08 P.M.

Sec. Kelly asked the membership to rise in order to give the photographer the opportunity to take the pictures of the Membership and Officers present at this meeting. The photographer had some difficulty taking the picture of the Membership, due to equipment difficulty, and asked for their cooperation.

Sec. Kelly then called upon Bro. George Dunlap a member of Local 546, who is a Scout Master of Boy Scout Troop 785 from Blue Island. Boy Scout Troop 785 then Posted the Colors for the meeting and led the Membership in the Oath of Allegiance to the American Flag.

Sec. Kelly introduced the following Officials, present at this meeting: Local 547 Joe Christmas, and Robert Vaughan, Local 262 Harold Rosa and George Flasi, Local 189 Ed. Zeman, Don Lorenz and Frank Jackman, Local 55 Ray Haase, Ray Abrahams and Bob Gorman, Local 350 Kermit Ray and Dick Gentry, who are not part of our contract negotiations, but here as observers, Sid Kripshaw, who administers our Wholesale Membership Health & Welfare Plan. The Officials of Local 546, Pres. Thomas Gorman, Rec. Sec., Glenn Naumann, Bus. Rep. Fred Nicklas, Frank Kelly, Oscar Lehmann and James Claborn, the Executive Board Members, George Herkert, George Pages, William Barthel and Bob Kennedy.

Sec. Kelly informed the membership that this meeting was called for the single purpose of ratifying (3) three proposed Contracts, for the ensuing (3) three years. There will be no other business discussed at this meeting.

Sec. Kelly then introduced our own Pres. Thomas Gorman who opened the meeting officially.

Pres. Gorman informed the membership, that everyone on the platform had been introduced, except our own Sec. Treas. R. Emmett Kelly, who has done an outstanding job in leading the negotiating committee thru our present contract negotiations. Pres. Gorman introduced Sec. Treas. R. Emmett Kelly who is known as the leader of the membership for their benefit.

Pres. Gorman stated that on Oct. 28, 1914 a handful of Meat Cutters called on International Secretary Dennis Lane at his home, and obtained a Charter for Local 546, in hopes that they could better their working conditions [fol. 214] through organization. At that time their salary was \$15.00 per week for 75 hours of work. Local 546 has had one strike in their history, just 5½ years after the

charter was issued, and it was successful. These men felt that they had to have Union, in order to liberate them from the employers demands. We have now come thru the years under the proper guidance of our Officials through the years to the point, where our Journeymen are now earning \$124 per week for 40 hours work. In those days the men really needed a charter for they were free of employers demands, they could negotiate. In 1961 we really needed a Union, for more reasons than one. 30 per cent of our membership would be out of a job, due to the employers demands, if it had not been for the leadership and guidance of Sec. Treas. R. Emmett Kelly. We have a strong Union, all Meat Cutters in our organization, and throughout the entire U.S. should be proud that we have a man that would not submit to the employers demands—We have a Champ.

Pres. Thomas Gorman then called upon Sec. Kelly to introduce our International Sec. Pat Gorman.

Sec. Kelly informed the membership that our International Sec. Pat Gorman, made a special effort to attend this meeting, for he drove all the way from Louisville, to be in attendance in our meeting today. Sec. Kelly then called upon International Sec. Pat Gorman for a short talk to the membership.

International Sec. Pat Gorman informed the membership that their Pres. Thomas Gorman was in good form today, and he wished he was in the same form. It is indeed a great honor to be present on this day of accomplishment and success for the membership for Local 546. I started to attend the Contract Meetings of Local 546 when wages were poor, and conditions were poor. Local 546 started to grow and progress, and always contributed to the growth and progress of the International Union, Local 546 has always been a pacemaker and a backbone to the International Union. It is a proud day for your International Organization for we now have 360,000 members throughout the U.S., this should also be a proud day for the 5,000 to 6,000 members of Local 546, for what you are to receive, due to the efforts of the Officials and the Negotiating

Committee of Local 546. The International Union has had [fol. 215] no strike with the Meat Packers this year. I am proud of the contributions made by Sec. Kelly, for he has always been called for in committees, in Local Unions, that have had contract trouble, in so far as, labor problems and negotiations. He has always been fair, honest and trustworthy in his decisions. Sec. Pat Gorman thanked the membership for being given the opportunity to talk to them, and was proud of the success, and progress that the Officials, and the Negotiating Committee of Local 546 have made.

Pres. Thomas Gorman thanked our International Secretary Pat Gorman, for the education and knowledge, that he has conveyed to us in his short talk. Pres. Gorman asked our International Secretary Pat Gorman to act as Honorary Chairman for this meeting.

International Secretary Pat Gorman acting as Honorary Chairman for the meeting, thanked Pres. Tom Gorman, and turned the meeting over to Sec. Kelly for explanation of the Contract to the membership.

Sec. Kelly informed the membership, that this meeting, due to the fact that there are (3) three proposed contracts to be presented to them, and voted upon by the membership, may be longer and consume more time. This meeting will proceed in the same fashion as our previous meetings, with Sec. Kelly explaining the proposed Contracts, and Recording Sec. Glenn Naumann reading them. Sec. Kelly then asked for the membership's cooperation in the procedure of the meeting.

Sec. Kelly then informed the membership of six year progress of our Credit Union, which started Oct. 25, 1955. Our membership to date is 1059, Membership Loans outstanding, to date \$162,289.87, Total Assets \$189,919.28, Total in Savings Accounts to date \$181,099.75, and the Interest Rate paid for the year of 1960 to 1961 is 4%. This is strictly a Non-Profit Organization for the benefit of the Membership, Invest in it for your Savings, it pays 4% interest on savings, borrow from it when you need it the interest rates are low, it was organized for the benefit of the Membership.



[fol. 216] Sec. Kelly asked the Recording Secretary to proceed with the meeting, and advised the membership to listen and vote wisely.

The Affiliated Meat Cutter Locals namely Locals 189, 262, 320, 546, 547, 571 and 638 with Locals 350, Hammond and Gary, and 612, Joliet, acting as observers, comprising approximately 10,000 union meat cutters, held their first joint meeting June 8, 1961. Prior to that date the combined union group had been making surveys of their respective members to determine what should be contained in our contract demands.

A second meeting of all 7 Locals was held on July 10, 1961, and each submitted written demands they felt their membership required. From this meeting, was prepared the basic proposal that was later submitted to the Industry Group of Employers.

Sec. Kelly informed the membership, that he was asked where the demands of the membership come from. Weeks and months prior to the time we open the contract, our Bus. Agents, our Presidents, our Secretaries, thru their contacts with the membership, formulate the demands of the membership within their own Local Union. Then a meeting of the 7 Local Unions involved in negotiating the demands of the membership is called. Each Local Union brings with them 7 copies of their membership demands, and they are distributed among the other Local Unions. The negotiating committee for the 7 Local Unions then boils them down to the demands, that are to be presented to the Employers. This is where the demands of the membership come from.

On July 10, 1961, our final demands were prepared. We had previously, on June 13, 1961, notified the Employers of our desire to re-open our contract to discuss wages, hours, and other conditions of employment. We now advised them that we would present formal demands to them, as a group, on July 27, 1961. On that date, the Unions and Industry met and the first joint negotiating meeting was set for August 22nd at the Bismarck Hotel.

The employers, likewise, arranged a private meeting of their own, to be held at National Tea Co., headquarters, one day in advance, in order to be fully prepared when they met the Unions.

At the first meeting on August 22nd, the following Employers were represented: The Associated Food Retailers (the independent association), Palace Cash Markets, Hillman's, Wieboldts, Jewel Food Stores (also representing [fol. 217] Eisner Food Stores), Eagle Food Stores (also representing Piggly Wiggly), The Kroger Co., The Great A. & P. Tea Co., National Tea Co. (also representing Del Farm Foods), Red Owl Stores, High-Low Foods, Sure-Sure Food Marts, Wally's Markets, Inc., Motto's Foods, and various independent operators.

Sec. Kelly advised the membership, that your negotiating committee had served notice to the employers 6 weeks ahead of the normal time. The employers in the first meeting represented 85% of the total membership, some companies had 3 representatives. There were five attorneys present on the Employers Committee, which made it very difficult, for you had to weigh every word, due to our suit with the Jewel Tea Co. There were 23 members on the Union Committee, and Sec. Kelly acted as Chairman and Spokesman for the Union Committee. Mr. Ed. Vorbeck, who is the General Counsel for Jewel Tea Co., acted as the Employer Chairman.

In this meeting of August 22nd, the following demands, which had been submitted by the Affiliated Local Union Negotiating Committee, were discussed. Proposed changes in Contract language were likewise submitted, so that our contract would conform to existing laws. We had proposed:

1. A two year agreement.
2. Establish a Health & Welfare program with full contribution to be made by the employer.
3. Wages: Increase Head Meat Cutters and Journeymen Meat Cutters by: \$6 per week for the first year and \$6 per week for the second year. Apprentices: 0 to 6 months \$75 for the first year, \$75 for the second year, 6 to 12 months

\$82 for the first year, \$83 for the second year, 12 to 18 months \$89 for the first year, \$91 for the second year, 18 to 24 months \$94, for the first year, \$97 for the second year, 24 to 36 months \$100 for the first year and \$104 for the second year.

All apprentices who attend the full meat training course being conducted in the Washburne Trade School and who receive a Certificate of Completion shall be classified as journeymen at the end of  $2\frac{1}{2}$  years of apprenticeship and shall be entitled to the journeyman rate of pay. School classes are held 48 weeks per year. The above described students must attend a total of 35 weeks, one day each week and 8 hours per day.

#### Wages: (continued)

Time and one-half shall be paid for all work over eight [fol. 218] hours in any one day and forty hours in any week. During a holiday week, the fifth day shall be paid at the rate of time and one-half.

A premium rate of  $37\frac{1}{2}$  cents per hour shall be paid for all extra work during the first contract year and fifty cents per hour during the second contract year.

4. Establish a pension plan with the full contribution to be made by the employer.

5. Wherever a Profit-Sharing or Thrift Plan exists, all members of the union employed by said company to be permitted to participate in such plan.

6. In Local 189, change the hourly structure to five 8 hour days and a 40 hour work week in Groups 3, 3A and 4. Starting time to be no earlier than 9:00 A.M. ☉

#### 7. Vacations:

a) Establish a new vacation policy of three weeks after eight years of service and 4 weeks after 12 years of service.

b) Whenever an employee who has been employed six months or longer leaves his present employment for any reason, he shall be entitled to pro-rated vacation based on his months of service.

c) Vacation pay shall be based on the rate being paid at the time the vacation is taken.

d) Vacation schedules must be posted in the market thirty days prior to the time the vacation is due.

8. Add "Pricing on the Premises" Clause.

9. Eliminate the "No Strike-No Lockout" Clause pending the outcome of the Rockford, Ill., arbitration decision.

10. Holidays: Eliminate the clause having to do with Victory day and insert in it's place an additional holiday to be known as Veteran's Day.

11. Establish a "Hiring Hall" Clause.

12. Establish an over-all company seniority clause.

13. Members of the Meat Cutters Union shall not be required as a condition of their employment to neither load or unload merchandise.

14. Reword the "Union Security" clause to comply with NLRB rulings.

15. Extra help shall be paid the day they work, or in the event they work more than one day, they work more than one day, they shall be paid the last day of the week in which they work.

[fol. 219] 16. In Article 4, Section 8, increase the rest periods to fifteen minutes twice daily.

17. Eliminate the system of staggered starting hours and return to a 9:00 A.M. starting time.

18. Establish a maximum "Work Standards" clause.

19. Eliminate the "Favored Nations" Clause.

20. Eliminate free "clean-up" time in service markets.

21. The Affiliated Local Unions reserve the right to amend these demands at any time during the negotiations.

Sec. Kelly explained to the membership that this was a list of their demands presented at the first meeting with

the employers, and represented the problems within the markets, and certainly we realize that we are not going to be able to receive all the demands we ask for, in bargaining for your contract we are going to have to give somewhere. When the employers received these demands they "blew their top", they immediately began to talk of restrictive demands, also, lack of increasing profits, which we know is not true. They discussed the Flexible Workday, which can be worked out. Sec. Kelly stated that there is a small minority of our membership, that continue to violate the terms of the contract regarding the Flexible Workday, and make it miserable, for the majority of our membership, and asked for the membership's cooperation in reporting such contract violations. Your reports will be held in confidence, and the violators will be taken care of, it is only for your own benefit.

On September 12, 1961, at 9:30 A.M. both groups met again at the Bismarck Hotel. All of the Employers had attended a closed meeting prior to this date at Jewel Headquarters in Melrose Park and prepared counter proposals to the Union demands. This counter proposal was presented on the part of the entire Employer's Committee. It was eighteen pages in length.

Sec. Kelly informed the Membership the Employers Proposal would have changed the existing contract, by at least 75%. It contained: A request for female wrappers, unrestricted hours of operation, elimination of product jurisdiction, which means our product could be cut and packaged off of the premises. Sec. Kelly informed the membership that he picked one clause out of this 18 page proposal, which was ridiculous all the way through, he thought the membership got the same kind of humor out of it as he did, when they heard it and asked the Recording Secretary to read it;

[fol. 220] Section 3.5 Discipline:

During an employee's probationary period, that is, during his first thirty days of employment, an employee may be discharged for any reason at the sole discretion of the



**Employer.** After an employee has completed the probationary period, such employee shall not be suspended, discharged or otherwise disciplined without just cause, just cause to include but not be limited to the following: poor performance on the job (whether due to inefficiency, loafing, carelessness or incompetency); deliberate and willful refusal to carry out a proper order promptly; dishonesty or other misconduct in connection with work, such as short-weights, falsification of a record, such as a time or employment record, sabotage, vandalism, stealing, etc.; serious or persistent infraction of reasonable rules promulgated by management relating to the health, safety and sanitation of employees, or the maintenance and operation of the premises and equipment, such as using or being under the influence of alcoholic liquors or narcotics while on duty, etc.; incivility to customers; engaging in a strike, work stoppage, slowdown, or picketing in violation of this contract; provided however, that in the event of a dispute as to whether a suspension, discharge, or other disciplinary penalty was for just cause, the matter shall be adjusted in accordance with the grievance and arbitration provision of this contract.

Sec. Kelly stated that this gives you a rough idea of the 18 Page Employers Proposal, the only thing they omitted, was to ask you to stop breathing. Due to the fact that this proposal was drafted by Attorneys, your negotiating committee, went no further at this time, and asked for the opportunity to check with their attorney's.

On September 20, 1961 (all Locals and Employers represented) another meeting was held. The Union stated that they had reviewed the Employer's 18 page Proposal but could find no agreement on any part of it, and we were actually miles apart. A lengthy discussion followed with both parties holding to their own proposals.

Sec. Kelly informed the membership, in this meeting they discussed contract language, vacation schedules, pro-rata pay, apprentice training, and the incentives for it, and at [fol. 221] the same time the the Employers passed an appendix sheet, requesting female wrappers for the first time.

They offered no ratio of female wrappers to apprentices or journeymen, and there was no wage offer mentioned, to continue bargaining, the Unions took under advisement. Mr. Vorbeck closed the meeting that day by saying, it is the "most restrictive contract in the United States".

Meetings were again held for a period of two consecutive days, namely September 28th and September 29th. During these days, discussion was had on vacations, the No Strike No Lockout Clause, Hiring Hall Clause and other matters that had no immediate bearing on the economic issues that the Unions were hoping to better. The Unions in this meeting made clear that their demands were being completely ignored by the Employers.

Sec. Kelly informed the membership that the negotiating committee, did not accomplish anything this day, but informed the employers they were willing to negotiate, and adjourned for another meeting.

On October 4th, because of inability to secure hotel accommodations, the Employer-Union Committee met in the offices of Local 546. In opening the meeting Chairman Kelly first gave a report to the Employers on the damaging effect female members can have on the security of jobs for the male membership of a Meat Cutters Union.

The following figures are an exact representation of our Kansas City Local 576 and are a true picture of the loss of male jobs during this last 10 year period.

Sec. Kelly stated to the membership, that these are true figures from our Kansas City Local 576. In January, 1951, total membership was—965, of which there was, 810 Male Members, and 155 Female Members. In January, 1961, just 10 years later, total membership was—1002, of which there was, 646 Male Members, and 356 Female Members. The total overall increase in membership in 10 years was 37 members. The total Female Membership increase in 10 years was 201 members. The total Male Membership job loss in 10 years was 164 jobs. These are the things your negotiating committee feared on female members, and that was the reason we cited these figures to them. This was

[fol. 222] our eighth meeting with the Employers, and we have had no wage or Health & Welfare offer of any kind.

On this same day, October 4th, a sub-committee of the Employers composed of a representative from Krogers, A & P, Jewel and the independent Association, met with a committee from the Unions and suggested the Unions lower their demands wherever possible, with the hope of starting to move toward a settlement. The Unions did this, eliminating some demands that had been offered as compromises.

We met again on October 13th for the ninth meeting. The Employers had an opportunity to meet together on two occasions to prepare an answer for the Unions. They offered the following and based it on a 3 year contract.

1. Their new contract as they had proposed it (all 18 pages).
2. The same request for female meat clerks.
3. The right to operate beyond 6 P.M., and on Sundays and Holidays.
4. The following salary increases:

Head Meat Cutters, \$3. per week, for the first year, No increase for the second year, and \$2 per week for the third year. Journeymen, \$3 per week for the first year, No increase for the second year, and \$2 per week for the third year.

Apprentices: The same identical salary rates for apprentices in all brackets except for the final bracket they offered a \$1 per week increase over the existing rates in the first year, none in the 2nd year, and \$1 more in the third year.

They also offered the following wage rates for meat wrappers:

0 to 12 months \$65 for the first year, \$70 for the second year, and \$75 for the third year. 12 to 24 months \$65 for the first year, \$70 for the second year, and \$75 for the third year. After 24 months \$65 for the first year, \$70 for the second year, and \$77 for the third year.

Sec. Kelly informed the membership that this was the first money we had received, if you can call it a money offer and accepted it as such. There was no Health & Welfare offer, which we were looking forward to. This is the first time in the history of Local 546 we have had a 3 year contract offer, which your committee was interested in. If satisfactory we could accept, it would give long range protection, in the event of a War and a wage freeze it would [fol. 223] offer Security. All contract discussions from this point on were based on the 3 year contract offer.

Before going into the next series of 3 meetings, the Employers had asked for a sub-committee meeting of both groups and wanted from the Union their specific demands covering a Health & Welfare Program. On October 24th, the Unions prepared a plan and on October 25th met with the Employer Sub-Committee and proposed the following:

1. That all employers of Union membership contained within the Locals' jurisdiction contribute a joint Union-Management Trust Fund the sum of \$24 per months for each employee.

2. That a Health & Welfare Program be adopted and mutually agreed upon to become effective beginning the second year of the contract.

3. Any Employer whose employees elect to retain the plan presently in force in that particular company, such Employer must make the plan available entirely cost free to the employee.

Sec. Kelly stated that the Health & Welfare Program your committee proposed is a stiff Plan, and the proposed contribution was a stiff one. We had always been known as a conservative Local, always negotiating for Wage increases for the Membership in the past. According to the demands of the Membership this year we are discussing a Health & Welfare Program in our negotiations. One that will give the Membership complete coverage in this area, and security in coverage when you transfer from one job to another. We have said any Employer whose employees elect to retain the plan presently in force in that particular

company, such Employer must make the plan available entirely cost free to the employee. Sec. Kelly informed the membership, that he wanted to explain the word ELECT. We mean that the membership themselves be given the opportunity to ELECT, which plan they want to have. We will have a series of meetings of the membership to determine which plan they want.

On November 1, 1961, we held our 10th meeting with the employers committee, which was the largest committee they had to date. Mr. Vorbeck of Jewel, their Chairman, occupied the morning by talking about the cost of a Health & Welfare Program, the extension of operating hours and a new classification of meat clerks. No progress was made.

[fol. 224] The following day, November 2nd, brought on a new side to the negotiations and was one which Jewel hoped to use in the present court suit that would aid them in obtaining night hours of meat operation. The opening statement, made by their Chairman, Mr. Vorbeck of Jewel, was:

Now, we would like to discuss market operating hours. We do not wish to make a union proposal, but an inquiry on the part of all Industry. He said, we would like the Unions to assume the following:

1. That all provisions of the present contract, namely wages, conditions, etc., are settled.

2. That Industry reaches agreement to limit the sale of fresh meat to Monday, Thursday and Friday, Nights.

3. That Jewel offers to dismiss their suit, without prejudice, and agrees not to reinstate it for the life of the 3 year contract, if the industry offer for 3 nights per week is accepted.

NOW: Under what conditions will the Union recommend to it's members that the hours when fresh meat may be sold, can be extended to nine P.M. on Monday, Thursday & Friday?

Sec. Kelly informed the membership, that this was not a proposal, but an inquiry on the part of the employers. At



a time, like this when we are actually in this court suit itself, nobody should know better than Sec. Kelly himself, for he has been called on several occasions, to give depositions as far back as 1955 and 1957 and 1959 on the attitudes of the membership regarding night work, and the attitudes Unions, regarding night work. He has filled a transcript of 147 pages with his answers, so we are being very careful at this point, and answered this inquiry, with the following answer:

1. This was a loaded question, that could have a bearing of the suit.

2. To negotiate night hours on the limited basis of 3 nights a week is unrealistic and would be conspiring with a group of employers to limit meat operations to certain nights and certain hours.

3. The Unions are willing to negotiate for seven days each week and 24 hours per day and if the Employers as a group were to present such a demand, we would certainly react with a demand covering such a request. At this point the employers requested a recess. They don't want a seven day week operation 24 hours a day. To Limit hours would [fol. 225] be no different than what Jewel was suing us for. Jewel had originall wanted one night a week operations, and now they want three nights a week. We felt this could also be considered restraint of trade and conspiracy, and we told them so.

Later, the afternoon of November 2nd, the Employers sent a sub-committee to the Union Offices, composed of Mr. Ernst of A & P and Mr. Quirk of National Tea. They requested that the Unions make known their demands for a seven day week, 24 hour a day operation.

Sec. Kelly, the Employers were told that the Union has had no request for such, and refused. Meaning we had no wage offer or guarantee, for night operation. The Sub-Committee stated they cannot get the entire industry group to make such a demand. One thing the employers don't want is a seven night operation, 24 hours per day. We then explore the possibility of industry making a proposal based

on the old contract, and this was what we wanted. The Unions answered that if the majority of industry would make such an offer, acceptable to the Unions, we would be interested. A phone call later that day from the Employers requested a meeting the following day.

On November 3rd (our twelfth meeting) we were to go into our longest meeting. Beginning at 9:30 A.M. on Friday, November 3rd, and ending at 2:30 A.M. on November 4th, for a total of 17 hours. To go through everything denied by the Employers would be impossible. They did, however, offer another proposal, based on a three year contract. In this Employer proposal we were to receive our first offer on a Health & Welfare Program. They likewise offered their second proposal to further increase wages as follows:

Head Meat Cutters \$3.50 for the first year, Health & Welfare for the Second year, and \$3. per week for the third year. Journeymen \$3.50 per week for the first year, Health & Welfare for the second year, and \$3. per week for the third year.

Apprentices: 0 to 6 months first year no increase, second year Health & Welfare, third year no increase, 6 to 12 months, no increase for the first year, second year Health & Welfare, third year No Increase, 12 to 18 months first year \$1 per week increase, second year Health & Welfare, third year no increase, 18 to 24 months, first year \$2 per week increase, second year Health & Welfare, third year [fol. 226] \$1 per week, 24 to 36 months, first year \$2 per week increase, second year Health & Welfare, third year \$2 per week increase.

Meat Clerks: 0 to 12 months \$65 per week, second year Health & Welfare, third year \$65 per week, 12 to 24 months \$70 per week for the first year, Health & Welfare for the second year, and \$70 for the third year per week, after 24 months, for the first year \$75, for the second year, Health & Welfare, for the third year \$77 per week.

Included with the wage offer was our first Health & Welfare offer, which was modeled after the Retail Clerks Plan now in effect in Chicago and suburbs.

Sec. Kelly informed the membership, the \$3.50 per week increase for Head Meat Cutters, and the \$3. per week increase for Journeymen, was the first sign of moving ahead on wages. The apprentice wages, were inadequate. The Meat Clerk Classification was still tied in with the offer. The Health & Welfare offer called for \$16 per month, the same as the Retail Clerks, and was not near enough.

At this point in the negotiations the Unions requested from Jewel, information on what amount the company paid into the Health and Welfare Plan covering their Meat Cutters. The answer was a point blank refusal on their part, to disclose the amount.

Sec. Kelly stated that the Unions knew the amount that the Jewel Tea Co. paid into their package plan, and the amount our Members paid into it. We had asked for this information repeatedly, and were refused. We had a right to this information according to law. During the month of August, while in negotiations, Jewel knew we wanted a Health & Welfare Program, increased their benefits, and decreased the employee contribution after the Union served demands for opening the contract. We thought it was a little unethical and we told them so.

That evening the Unions countered the Employers offer, still demanding that all Employers raise our Head Meat Cutters and Journeymen by \$5.50 in the first and third years of the contract and provide proper increases for apprentices. We did no retreat from our position that Health & Welfare benefits be provided in the amount of a \$24. monthly contribution by the Employer for each employee. We had compromised some of our demands but retained those we felt were most necessary for our members.

[fol. 227] At 12:55 A.M., after 15 hours of bargaining, the Employers presented still another proposal, in which they increased their wage offer, Health and Welfare offer and various fringe benefits.

The offer is as follows:

1. Term—3 years.

2. Employers are willing, October 1, 1962, either to pay the sum of \$18. per month, per employee, into a jointly administered Trust Fund, or provide the Health & Welfare benefits provided in the Employers Health & welfare Plan that might be in effect on July 1, 1962.

3. Wages: Head Meat Cutters \$4.50 per week increase for the first year, Health & Welfare for the second year, and \$3.50 per week increase for the third year. Journeymen \$4.50 per week increase for the first year, Health & Welfare for the second year, and \$3.50 per week increase for the third year.

Apprentices: 0 to 6 months \$75. per week for the first year, Health & Welfare for the second year, and \$75. per week for the third year. 6 to 12 months \$81. per week for the first year, Health & Welfare for the second year, and \$81. per week for the third year. 12 to 18 months \$88. per week for the first year, Health & Welfare for the second year, and \$89. per week for the third year. 18 to 24 months \$93. per week for the first year, Health & Welfare for the second year, and \$95. per week for the third year. 24 to 36 months \$99. per week for the first year, Health & Welfare for the second year, and \$102. per week for the third year.

New Classification of Male Meat Clerks:

0 to 12 months \$75. per week for the first year, \$75. per week for the second year, and \$75. per week for the third year. After 12 months \$80. per week for the first year, \$80. per week for the second year, and \$82. per week for the third year.

4. Apprentice ratio to be 1 apprentice for each 2 Journeymen. Meat Clerks to be counted as apprentices for purposes of this ratio.

Sec. Kelly informed the Membership, that this was the highest wage offer to date, the Meat Clerk classification, was still there. The apprentice increase offer was the best

they offered so far, there was a new high for Health & Welfare offered, which was \$18. per month, and they tendered a typed sheet to us on Health & Welfare, which had been prepared 3 days earlier, and apparently they did not want to offer it, so the membership present and those who are not present, will know the content of the Health & [fol. 228] Welfare program presented by the Employers, and can compare it with their own Health & Welfare Program if they have one. Sec. Kelly asked that this sheet be read to the membership, which is as follows:

**Chicago Meat Cutters**  
11/1/61

**Health and Welfare Option (2a)**

Effective October 1, 1962 the Employer agrees to provide each full-time employee covered by this contract who has completed his probationary period with health and welfare benefits in accordance with the provisions of whichever of the following alternative plans is approved by the Employer's full time employees covered by this contract:

**Jointly Administered Health and Welfare Trust Fund.**

Health and Welfare benefits to be provided under a jointly administered Health and Welfare Trust Fund to be established by the parties hereto pursuant to a Health and Welfare Trust Agreement to be hereafter executed under the terms of which trust agreement the Employer shall pay to the Health and Welfare Trust fund the sum of \$18. per month for each full-time employee covered by this contract. Said Employer payments shall commence on the effective date of this provision with respect to all full-time employees who have completed their probationary period and on the first of the month following the completion of their probationary period with respect to all other full-time employees and shall cease upon termination of their employment.

Payment by the Employer into this trust fund shall be in lieu of all Employer established plans or programs,



including sickness and accident disability pay, hospital, medical & surgical care, major medical expense and group life and accident insurance, each of which programs shall automatically terminate on the effective date hereof.

#### Employer's Benefits Plan:

The Health and Welfare Benefits provided in the Employer's Health and Welfare Plan or Plans in effect on July 1, 1962, such plan to be administered and financed in accordance with the rules and conditions contained therein.

The Union and the Employer shall make the necessary arrangements to conduct an election by secret ballot during the month of July, 1962 to determine the preference of the majority of the Employer's full-time Employees covered by this contract. The decision of such majority shall be binding upon the Employer, the Union and the [fol. 229] Employees involved for the duration of this contract. In the event the Employer does not have a Health and Welfare Program in effect on July 1, 1962, then the Employees of said Employer shall be deemed to have elected to be covered under the Jointly Administered Health and Welfare Trust Fund.

Sec. Kelly explained to the membership, that where a company has a Health & Welfare Plan in effect, a Secret Ballot Vote of the Membership within the company will be taken, to determine whether the Membership within that Company, want to come into Union over all plan, or remain with the company plan. This is the way we want it done, we want to know that everybody is satisfied. On November 13, our 13th and next to the last and final meeting was held. We had been advised by Union Counsel that under the law we were entitled to know what amount the Employer was paying into his Health & Welfare Plan, and on that day we served a notice on Jewel Tea Company, in a letter, requesting such information. The letter is as follows:

Dear Mr. Vorbeck:

In connection with our current collective bargaining negotiations relative to a new contract with your company

for the period beginning October 7, 1961, we should appreciate having you furnish us with the records and data showing the cost to you for the past year of the Health and Welfare Benefits which are afforded to employees within the bargaining unit which we represent. This data should show the gross premiums paid by you, any dividends or refunds received from the insurance company or from Blue Cross-Blue Shield, and your net cost for each employee in such bargaining unit.

We do not wish to inconvenience you in any way and if it is more convenient for you, we shall be agreeable to having our actuary or accountant check the necessary records in your office.

It is necessary that you furnish us with this information in order that we may make a proper evaluation of the current insurance program which covers the employees whom we represent, and towards which such employees contribute, before we can arrive at conclusions in the present contract negotiations.

Your Cooperation in this matter will be appreciated.

Very truly yours,

(signed) R. EMMETT KELLY  
Chairman, Affiliated Local Unions'  
Negotiating Committee, etc.

[fol. 229a] Sec. Kelly informed the Membership, that this letter apparently did the job, for on November 21st, as a result of this request, we were furnished a 4 page letter by Jewel Tea Co., in which they agreed to permit us to examine their records to determine, the cost to the company, and the contributions made by our Membership, in the package plan they had.

The Unions then lowered their demands and proposed the following:

1. Three year contract.
2. The same language on a Health & Welfare Plan but lowering the contribution to \$22. per month for each employee.

3. Wages: Head Meat Cutters \$5.50 per week increase for the first year, Health & Welfare for the second year, and \$5. per week for the third year. Journeymen \$5.50 per week increase for the first year, Health & Welfare for the second year, and \$5. per week increase for the third year.

Apprentices—the same as our original proposal, namely: 0 to 6 months \$75. per week for the first year, Health & Welfare for the second year, and \$75 for the third year. 6 to 12 months \$82. per week for the first year, Health & Welfare for the second year, and \$83. per week for the third year. 12 to 18 months \$89. per week for the first year, Health & Welfare for the second year, and \$91. per week for the third year. 18 to 24 months \$94. per week for the first year, Health & Welfare for the second year, and \$97. per week for the third year. 24 to 36 months \$100. per week for the first year, Health & Welfare for the second year, and \$104. per week for the third year.

Ratio—Three apprentices for every 7 journeymen.

Wages—continued:

Time and one-half to be paid in the 2nd year of the contract, after 44 hours in any one week; and during the 3rd year, after 40 hours in any one week.

4. Vacations—4 weeks after 18 years of employment.

5. Seniority Clause to be mutually agreed upon and applied to the 2nd year of the contract.

Sec. Kelly stated that here for the first time, we had lowered our Health & Welfare demands to \$22. per month, we had lowered our 3rd year demands for Head Meat Cutters and Journeymen to \$5. per week increase, and had ignored the Meat Clerk proposal. On the ratio of apprentices they offered, we knew we had to give somewhere along [fol. 230] this line. We made a proposal to them for 3 apprentices for 7 journeymen, which is 43%, the contract now states 2 for 5 which is 40%, they wanted 1 for 2 which is 50%, and as you see our offer is not to bad. We likewise wanted to open the door for 4 week vacations in our contract. The Seniority Clause to us, was greatly important.

Now at 6:25 P.M. that same night, we re-convened and the Employers made a proposal that was practically identical to their last offer. After much discussion, we turned it down, and the Employers were informed by the Unions that they would meet no further after November 19th. We told them we wanted to establish a meeting for the Membership Sunday November 26th, in order for the Unions to set up a meeting of this size, we must have this much time in advance, so we gave them a deadline, and if an agreement was not reached by that time, the meeting of the Membership will be held, and we will take our chances.

The 14th and final meeting, as agreed, was held on Thursday, November 16th. Mr. Vorbeck of Jewel, the Employer Chairman, opened the meeting by stating: "That a formal reply to our letter requesting Health & Welfare information on the Employer contribution was being prepared by his company and we would have it by Tuesday, November 21st. He indicated the reply would be favorable to the Union.

The following proposal was then offered by All Industry, based on the language of our old contract.

1. Term—3 years.
2. Agree to prepare a seniority clause to become operable during the second year of contract.
3. Mutual agreement to be reached by July 1, 1962, providing for operation of Service Delicatessen Departments in Self-Service Markets, after 6 P.M. and on Sundays. (to be covered by letter.)
4. Clarification of Employers right to sell fresh and frozen poultry from Self-Service cases on Sundays and Holidays.
5. Four weeks vacation after 20 years, to become effective January 1st, 1963.
6. Same apprentice demand of 1 apprentice to 2 journeymen.
7. Employers drop demand for male meat clerks.

8. Agree to all previous agreed upon terms and provisions.

[fol. 231] 9. Wages: Head Meat Cutters \$5. per week increase for the first year, Health & Welfare for the second year, and \$4. per week increase for the third year. Journeymen \$5. per week increase for the first year, Health & Welfare for the second year, and \$4. per week increase for the third year.

Apprentices—Employers will meet the Union's original demand..

Pro-rata increases for extra help.

10. Health & Welfare contribution to be \$19. per member per month.

The following statement was then made by Mr. Vorbeck, Employer Chairman and General Attorney for Jewel:

"When final agreement is reached on all things, Jewel will make a proposal with respect to market operating hours. It will provide for 7 days per week, 24 hours a day operation, in which any or all other employers may join, as they see fit."

Sec. Kelly stated in this meeting we reached \$19. on Health & Welfare, and the highest wage offer to date, and we also received from Jewel a proposal for night operation. We had been waiting for this, during all of the 14 meetings, for we expected it. The Unions recessed and prepared their final proposal that same day.

The final Union proposal:

1. A three year contract.
2. Same language on Health & Welfare as proposed Nov. 13th, with a contribution of \$22. per month.

3. Wages: Head Meat Cutters \$5. per week increase for the first year, Health & Welfare for the second year, and \$5. per week increase for the third year. Journeymen \$5. per week increase for the first year, Health & Welfare for the second year, and \$5. per week for the third year.



Apprentice wages agreed.

Proportionate increases on extra help agreed.

Relaxation on apprentice ratio—3 apprentices for 7 journeymen.

4. Adjust Local 189 differences over 2 year period.

5. Vacations: —Four weeks after 20 years, effective Jan. 1, 1962.

6. Seniority Clause—agreed.

7. Agree to clarification of Employers right to sell poultry on Sundays. The language and method of sale to be mutually agreed upon.

[fol. 232] 8. Union agrees to set up a committee to study Employers request for relief on service delicatessen operation in self-service markets with a view to making it operable by July 1, 1962.

Sec. Keily informed the membership, that this was the Unions' final proposal, and at 5:45 P.M. that same day the Employers offered what was to be their final proposal to the Union.

1. Three year term—agreed.

2. A \$20 contribution to a Health & Welfare plan.

a) Accept the Unions option date.

b) Cost free plan to the member if he sees fit to retain his present company plan. (All Industry except Jewel agreed to this.)

3. Wages: Agreed. Head Meat Cutters \$5. per week increase for the first year, Health & Welfare for the second year, and \$5. per week increase for the third year. Journeymen \$5 per week increase for the first year, Health & Welfare for the second year, and \$5 per week increase for the third year.

Apprentice and extra rates—agreed.

Our apprentice ratio accepted.

4. Local 189 differences—agreed.
5. 4 weeks vacation after 20 years effective January 1, 1962—agreed.
6. Seniority Clause—agreed.
7. Agree to our clarification on Sunday and Holiday Poultry sales.
8. Agree to committee study on night delicatessen operation.
9. Agree to up-grade apprentices to journeymen at the end of 2½ years of apprenticeship. If apprentice has attended our apprentice training school and received Certificate of Completion.

Sec. Kelly stated, we had now reached our goal, with one exception, we wanted a \$21. per month contribution on Health & Welfare. We told the Employers if they would increase their offer from \$20. to \$21 per month contribution, we could reach an agreement, and they offered \$20.50. The Unions refused. The most humorous—penny pinching idea they had, when they offered to flip a coin for the 50¢. When we made it clear, that we were not in mind of flipping coins, with the Memberships' money, they granted the \$21. per month contribution.

At this point, Mr. Vorbeek of Jewel presented a letter to the Union, dated November 13th, which had been prepared [fol. 233] and in readiness for the past three days, and in which he proposed to the Unions two propositions for night operation. It was offered by Jewel only Not one single other Employer joined. Sec. Kelly explained to the Membership, that we are running a bit longer in time for this meeting, and the letter may be long, but it contains two of the propositions presented by Jewel Tea Co., requiring the Memberships' Vote, so bear with us and pay attention, and it won't be to much longer before we are finished.

The Letter and its two propositions follow:

"Mr. R. Emmett Kelly, Chairman  
 Affiliated Local Unions Negotiating Committee  
 Locals 189, 262, 320, 546, 547, 571 and 638  
 130 North Wells Street  
 Chicago, Illinois.

Dear Mr. Kelly:

During the course of the 1961 negotiations you have stated that if the entire industry were to make an offer which restricted the hours for the sale of meats to one, two or three nights a week, such an offer would be considered a conspiracy in restraint of trade and would, therefore, not be acceptable to the Affiliated Local Unions. You further stated that in order for the Local Unions to entertain any offer for night operations, it must be an offer which would provide for the sale of meats on a 24-hour day, 7-day-a-week basis—in other words, which would provide for no restrictions on the days or hours when meat may be sold.

Since Jewel does not want to be party to a conspiracy to restrain trade and since it is also desirous of removing all restrictions on the hours at which meats may be sold, Jewel makes the following offers on behalf of itself and any other employer who desires to join in the offers.

#### Jewel Offer No. 1—Self-Service Markets Only:

During these negotiations, and also the negotiations for the last several years, you have consistently maintained that neither our meat cutters, nor those of any other employer want to work after 6:00 P.M. Our first offer is designed to accede to the stated wishes of your membership in this respect in that no employees will be required to [fol. 234] work on Sundays or after 6:00 P.M., Mondays through Saturdays, inclusive. Since it is not possible to operate a service market without employees on duty, this limitation on the hours which employees may be required to work necessarily limits our offer to self-service markets.

Jewel offers to enter into a contract covering its self-service markets which will provide the same wages, health and Welfare, vacations and all other terms of employment

as those agreed upon between the Affiliated Locals and the Industry, except as follows:

1. All restrictions on the hours at which meats and meat products may be sold shall be removed from the contract.

2. No employees other than the members of the Meat Cutters Union may stock or rotate the meats in self-service cases.

3. No employee may be required to work on Sundays or after 6:00 P.M., Mondays through Saturdays, inclusive, except that reasonable overtime may be required outside of such hours if the market or meat department is not open for the sale of meat.

#### Jewel Offer No. 2—Self-Service and Service Markets:

In the belief that adequate remuneration for work after 6:00 P.M. may offset the desire of your membership not to work after 6:00 P.M., Jewel offers to enter into a contract applicable to both service and self-service markets which will provide the same wages, health and welfare, vacations and other contract provisions as those agreed upon between the industry and the Unions negotiating committee, except as follows:

1. All restrictions on the hours at which meats and meat products may be sold shall be removed from the contract.

2. No employees other than the members of the Meat Cutters Union may stock or rotate the meats in self-service cases.

3. All work in excess of 8 hours in any one day, or after 6:00 P.M., on Mondays through Saturdays, inclusive, or on Sundays, shall be paid for at time and one-half.

4. A journeyman must be on duty during all hours that fresh meat is offered for sale between the hours of 9:00 A.M. and 9:00 P.M. on Mondays, Thursdays, and Fridays, and between the hours of 9:00 A.M. and 6:00 P.M. on Tuesdays, Wednesdays and Saturdays. If the needs of our business [fol. 235] require that an employee be on duty after 6:00 P.M., on Tuesdays, Wednesdays or Saturdays, or at any time on Sundays, the first employee called to work dur-

ing such hours must be a Journeyman Meat Cutter. If a Journeyman is on duty, additional employees on duty at the same time may be apprentices or male meat clerks.

We shall, of course, endeavor to rotate any work required after 6:00 P.M., and on Sundays among qualified Journeymen.

5. The work day for any employee scheduled to work after 6:00 P.M. shall be so fixed as not to require him to put in more than 8 hours on the job. Thus, an employee who would be expected to work to 9:00 P.M., one hour off for supper would be scheduled to start work beginning at 12:00 noon.

An earlier starting time for an employee required to work at nights might be agreed upon, but we have not offered it in the belief that you would not want to require by union contract a longer workday than 8 hours.

We wish to point out in making Jewel Offer No. 2 that we are offering to provide substantially the same working conditions and premium pay as those now enjoyed by our Joliet and Gary-Hammond Meat Cutters. The half-time premium pay involved in paying time and one-half for work after 6:00 P.M., will provide our meat cutters with substantially more premium pay than that enjoyed by employees on night shifts (the normal range is from ten to twenty cents per hour) and more than the retail clerks who will be working alongside of the meat cutters, none of whom now receive premium pay except in the event they perform night stocking work or work more than one night a week, the premium for such night work ranging from ten to twenty-five cents per hour.

Jewel is willing to enter into a contract embodying the terms of either of the above offers, which between them offer a choice of no night work or night work at premium pay.

Very truly yours,

E. T. Vorbeck  
Assistant Secretary



Sec. Kelly informed the membership, for the record the two Jewel Tea Co., propositions were read. They are somewhat difficult to understand. We had our attorneys take a copy of these propositions, and work out an answer to these propositions, it was so long Sec. Kelly did not want to introduce it, into the meeting record, but we [fol. 236] have a reply from our attorneys that give us all of the reasons, that we knew were in the letter, as to why this would not be good for the Meat Cutters in the Chicago Area.

Sec. Kelly explained to the Membership that in the Jewel No. 1 proposal, they would add to your work-load, it would permit a 7 day operation around the clock, you would have to work ahead to stock the cases, so they could sell our products after 6:00 P.M., and you would receive no extra pay of any kind for the extra work you have done, and it would result in clerks doing your work, because under the terms of the proposition, there would be no Meat Cutters required. In the face of this, and this one of the first of the three proposals to be voted upon by the Membership, that the Unions, your negotiating committee, and Sec. Kelly recommend strongly that you Vote Against this proposition for Chicago Area, and proposed to the Chairman of the Meeting, International Secretary Pat. Gorman, that he place the Vote of the Membership, on this proposition at this time.

Chairman Pat. E. Gorman called upon the Membership to Vote on Jewel Tea Co., Proposal No. 1. There was a motion made by Bro. Robert Congrieve, that we reject Jewel Tea Proposal No. 1, this motion was seconded by Bro. Peter Schenk. On the question there were no comments. This motion was passed by a Unanimous AYE Vote of the Membership.

Sec. Kelly explained to the Membership, that Jewel Tea Co., proposal No. 2, provides for 3 nights, it also gives the employer the right to work the other 3 nights without Union help. If you were called upon to work one night, you might increase your basic Union Scale by \$3.87 per week. They have here offered, not time and one half, but half time.

This less than offered by Jewel four years ago, when they brought this law suit upon us. As we did on Proposition No. 1, we strongly recommend that you vote it down, and asked the Chairman to call for a Vote on Proposition No. 2 of the Jewel Tea, by the Membership.

Chairman Pat. Gorman called upon the Membership to Vote on Jewel Tea Co. Proposal No. 2. There was a motion made by Bro. Joe Magliano, and Seconded by Bro. Peter Schenk, that we reject Jewel Tea Co. Proposal No. 2. On the questions there no comments. This Motion was passed by a Unanimous AYE Vote of the Membership.

[fol. 237] Sec. Kelly informed the Membership, that we now have the third and final proposal to consider and vote on. A proposal that came from all of Industry, including Jewel Tea. Let's see what is included in this offer, "real fast":

1. A three year contract.
2. An increase for Head Meat Cutters and Journeymen \$5. per week for the first year, this will bring our Journeymen wage up to approximately \$7000. per year, with Health & Welfare for the second year, and a \$5. per week increase for the third year, will bring our package increase to 38¢ per hour.
3. Apprentices rates ranging from \$75. to \$104.
4. We will upgrade Apprentices to Journeymen at the end of 2½ years, without him knowing it, he will earn \$845. in the third year sooner, than if he had to work out the full 3 years.
5. Retroactive pay is guaranteed, as of next Saturday, it will total 8 weeks.
6. A Seniority Clause to become effective in the 2nd year.
7. Increased vacation policy of 4 weeks after 20 years.
8. A Health & Welfare Contribution of \$21. per month, after the 2nd year of the contract, if the proposal is rati-

fied, there will be a series of meetings held in the various companies, who have a Health & Welfare Program of their own. These meetings will be held for each individual company, in order to determine the demands of our Membership within the company by secret ballot. We think that with a \$21. per month contribution for a Health & Welfare Plan, that we can buy an excellent Plan for the Membership, it will cover hospitalization, sick pay, life insurance, for you and your family, and we think that these are facts that you are all interested in.

9. We will have no male meat clerks.

10. We will have no female wrappers.

11. Most important, we will have no night operation.

Sec. Kelly stated that this represents an All Industry Offer, in his opinion it is the best Offer we have received in Contract Negotiations, and recommended the Membership accept it.

Chairman Pat. Gorman informed the Membership, that they had heard third Proposal, and the recommendations of their Negotiating Committee, and asked for a Vote of the Membership.

[fol. 238] Bro. Koestler made a motion that the Membership accept the Proposal made by all of Industry, this motion was seconded by Bro. Matt Schneider. On the question of the motion there were no comments. This Motion was passed by a Unanimous AYE VOTE of the Membership.

Sec. Kelly informed the Membership, that our photographer, was unable to get a picture of the Membership due to difficulties and asked them as they leave to face the camera. There will be a letter mailed to the Membership with a Wage Card, and the facts you will be interested in, and at the time your Health & Welfare Meetings come up, you will be so notified.

Honorary Chairman Patrick Gorman announced, that there being no further business and the powers and authority bestowed upon him, declared the meeting adjourned.

The Meeting Adjourned at 3:45 P.M.

/s/ GLENN J. NAUMANN  
RECORDING SECRETARY

[fol. 239] Clerk's Certificate to foregoing exhibits (omitted in printing).

[fol. 240] Clerk's Certificate to foregoing exhibits (omitted in printing).

**PETITION FOR A  
WRIT OF  
CERTIORARI**



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Office Supreme Court, U.S.

FILED

JUL 2 1964

JOHN F. DAVIS, CLERK

IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1963

No.

**240**

LOCAL UNIONS NOS. 189, 262, 320, 346, 547, 571 and 638,  
AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN  
OF NORTH AMERICA, AFL-CIO, et al., *Petitioners,*

v.

JEWEL TEA COMPANY, INC., *Respondent*

**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
SEVENTH CIRCUIT**

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1963

\_\_\_\_\_  
No.  
\_\_\_\_\_

LOCAL UNIONS NOS. 189, 262, 320, 546, 547, 571 and 638,  
AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN  
OF NORTH AMERICA, AFL-CIO, et al., *Petitioners,*

v.

JEWEL TEA COMPANY, INC., *Respondent*

\_\_\_\_\_  
**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
SEVENTH CIRCUIT**  
\_\_\_\_\_

Local Unions Nos. 189, 262, 320, 546, 547, 571 and 638,  
Amalgamated Meat Cutters and Butcher Workmen of  
North America, AFL-CIO, and their officers and repre-  
sentatives named in the complaint (R. 14-15, 16-17, 69),  
pray that a writ of certiorari issue to review the judgment  
of the United States Court of Appeals for the Seventh  
Circuit entered in the above-entitled case on April 27, 1963.

### OPINIONS BELOW

The opinion of the Court of Appeals is not yet reported (*infra*, pp. 3a-11a). The opinion of the District Court appears in the record and is reported at 215 F. Supp. 839 (R. 661-678). The prior opinion of the Court of Appeals on the interlocutory appeal, affirming denial of the motion to dismiss the complaint, is reported at 274 F.2d 217, cert. denied, 361 U.S. 936 (*infra*, pp. 12a-22a). The initial opinion of the District Court, holding that the complaint was sufficient to withstand a motion to dismiss, appears in the record and is reported at 36 CCH Lab. Cas. ¶ 65,344 (R. 58-65)..

### JURISDICTION

The judgment of the Court of Appeals was entered on April 27, 1964 (*infra*, p. 1a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

### QUESTIONS PRESENTED

Collective bargaining agreements governing employment terms of meat departments in retail food stores in the Chicago area provide that market operating hours for the sale of fresh meat shall be from 9:00 A.M. to 6:00 P.M. Monday through Saturday. With variations as to the specific hours, regulation of market operating hours by collective bargaining agreement has existed in the Chicago area since 1919. The following questions are presented:

1. Based on the District Court's undisturbed finding that the limitation "was imposed after arm's length bargaining, . . . and was fashioned exclusively by the unions to serve their own interests—how long and what hours members shall work, what work they shall do, and what pay they shall receive" (R. 672), whether the limitation upon market operating hours and the controversy concerning it are within the labor exemption of the Sherman Antitrust Act.

2. Whether a claimed violation of the Sherman Antitrust Act which falls within the regulatory scope of the National Labor Relations Act is within the exclusive primary jurisdiction of the National Labor Relations Board.

3. Whether the limitation upon market operating hours, which has no anticompetitive purpose or effect and exists instead to fulfill the butchers' wish not to work at night, constitutes an unreasonable restraint of trade simply because some consumers prefer longer than 5½ hours during the week within which to buy fresh meat.

4. Based on the District Court's undisturbed finding that the limitation upon market operating hours has "no discernible effect" on the amount of meat purchased at retail within the Chicago area market (R. 676), whether the limitation is outside the purview of the Sherman Antitrust Act because it does not adversely affect the interstate inflow of meat into the Chicago area market.

5. Whether respondent was injured in its business or property by the limitation upon market operating hours, including the issue whether, as the District Court had explicitly withheld decision of this question, the Court of Appeals in the absence of initial determination by the District Court was authorized to act as *de novo* fact-finder and to state a bare conclusion without finding the facts specially.<sup>1</sup>

6. Whether respondent is *in pari delicto* and therefore without standing to maintain the action.

### STATUTES INVOLVED

The pertinent provisions of the Sherman Antitrust Act (26 Stat. 209, 15 U.S.C. § 1), the Clayton Act (38 Stat. 730, 15 U.S.C. § 12), the Norris-LaGuardia Act (47 Stat. 70, 29 U.S.C. § 101), and the National Labor Relations Act (61 Stat. 136, 29 U.S.C. § 151) are set forth in Appendix D, *infra*, pp. 23a-30a.

<sup>1</sup> This issue is also presented in questions 4 and 6.



## STATEMENT

Collective bargaining agreements in the Chicago area governing the employment terms prevailing in the meat departments of food stores provide with respect to the retail sale of fresh meat that "Market operating hours shall be 9:00 a.m. to 6:00 p.m. Monday through Saturday, inclusive. No customer shall be served who comes into the market before or after the hours set forth above . . ." (pl. exs. 8, 9, § 5.1, pp. 15-16). With unimportant variations as to the specific closing time, regulation of market operating hours by collective bargaining agreement in the Chicago area originated in 1919, and in the precise form in which it presently exists, it has been in being since 1947 (R. 662-663).

The complaint filed by respondent Jewel Tea Company alleged that this regulation of market operating hours resulted from a conspiracy to violate sections 1 and 2 of the Sherman Antitrust Act entered into among Associated Food Retailers of Greater Chicago, its secretary and treasurer Charles H. Bromann, the seven meat cutter local unions, and certain of their named officers and representatives. More particularly, the claim was made that Associated, its members, and its secretary and treasurer conspired to eliminate competition in the sale of fresh meat after 6:00 P.M., by insistence that all collective bargaining agreements between food store operators and the unions within the Chicago area shall contain a provision limiting market operating hours from 9:00 A.M. to 6:00 P.M., Monday through Saturday, and that this conspiracy was aided and abetted by the unions, their members, and their officers and representatives as co-conspirators (R. 14-27).

At trial, upon conclusion of plaintiff's case, the District Court dismissed the complaint against Associated and Bromann for want of any evidence of conspiracy (R. 683-684, 658). Based on the view that "Jewel has sought relief from the defendant Unions apart from the theory of conspiracy," the District Court did not grant their contem-

poraneous motion to dismiss (R. 684, 662). At the conclusion of the whole case, "on the basis of the entire record" (R. 662), the District Court dismissed the complaint against the unions and their officers and representatives, holding alternatively that "the purport, history, and effect of the controverted provision indicates that it is within the labor exemption of the Sherman Act, . . . and that it imposed no 'unreasonable' restraint on trade" (R. 678). In addition, as part of its rationale that the regulation of market operating hours was reasonable, the District Court found that the evidence did not "in any way establish that less meat is consumed in this area, in proportion to population and income, because of the restriction, than in areas where fresh meat is sold at night. In fact, the objective statistics indicated that the restriction had no discernible effect" (R. 676). The District Court did not explicitly relate this finding to the unions' position that the limitation was outside the purview of the Sherman Act because it did not adversely affect the interstate inflow of meat into the Chicago area market. The District Court expressly withheld decision upon two issues, stating that since "there is no violation of the Sherman Act the court need not consider whether plaintiff sustained any injury to its business, or whether it was in *pari-delicto* with the defendant unions" (R. 678).

The Court of Appeals reversed. It did not disturb any findings of fact, noting that "there are no factual disputes revealed by the evidence," and "no question as to the credibility of any witnesses on any issue which we consider relevant . . ." (*infra*, p. 5a). It held that the determination of market operating hours was an inherent management function to be exercised exclusively by the proprietor, and that a collective bargaining agreement on the subject established, without more, forbidden concert among labor and non-labor groups in violation of the antitrust laws (*infra*, pp. 6a-8a, 10a-11a). It further held that the limitation was outside the rule of reason because

it did not promote competition (*infra*, pp. 8a-9a). In addition, without any particularization of reasons, the Court of Appeals held that respondent "has been injured in its business and property," and that the limitation exerted an "unlawful restraint on interstate commerce" (*infra*, p. 9a). It held, finally, that strike authorization voted by the union members, regardless of any other circumstances, established that respondent was not *in pari delicto* (*infra*, pp. 9a-10a). In the case of Associated and Bromann, the Court of Appeals reversed and remanded "for such further proceedings as may be consistent with this opinion"; in the case of the unions and their officers and representatives, the Court of Appeals reversed and remanded with directions "to enter a declaratory judgment and an injunction substantially as prayed in the complaint herein and to ascertain and award to plaintiff such monetary relief as may be appropriate under this court's opinion" (*infra*, p. 44a). In its prior decision on the first appeal, affirming denial of the motion to dismiss the complaint, the Court of Appeals had held that the controversy was not within the exclusive primary jurisdiction of the National Labor Relations Board (274 F.2d at 220-221, *infra*, pp. 16a-18a).

The decisions below pertaining to the applicability of the labor exemption and the rule of reason may be summarized as follows:

#### **I. The Findings Of Fact And Conclusions Of Law Of The District Court**

Respondent operates a chain of retail food stores in the Chicago area. Food stores in this area are also operated by other chains and by independent merchants. Associated Food Retailers is an employer association representing independent retail stores in collective bargaining, and its secretary and treasurer Charles H. Bromann is its spokesman. The seven local labor unions represent the meat cutters in the Chicago area employed in the meat departments of the food store operators. (B. 661, 664, 665, 667, 670.)

The collective bargaining agreements governing the employment terms in the meat departments in the Chicago area recognize the unions as the exclusive bargaining representatives of all employees in the meat department who process, wrap, handle and sell frozen and fresh meat on the employer's premises. With minor exceptions, the agreements require that the work entailed in the preparation and sale of meat, including the replenishment of stock and cleaning of counters, shall be performed exclusively by the meat department employees. The agreements provide that 8 hours shall constitute the basic work day, which shall begin no earlier than 8 A.M. and end no later than 6 P.M. They correlatively specify that "market operating hours shall be 9 A.M. to 6 P.M. Monday through Saturday," and that no customer shall be served who comes into the market before or after these hours. The contracts authorize the sale after 6 P.M. of certain products other than fresh meat. (R. 664.).

The limitation upon market operating hours originated as a result of the butchers' strike in 1919 in the Chicago area called to protest and reduce the then prevailing 81 hour, 7 day work week (R. 662, 671). The ensuing 1920 collective bargaining agreement governing meat department operation established limitations on working and marketing hours (R. 662). In the same article of that agreement, after first providing that "nine hours shall constitute the basic working day, hours shall be 8 A.M. to 6 P.M. excepting Saturdays and days preceding holidays beginning at 8 A.M. and quitting at 9 P.M.," it was next provided that "It is expressly understood that no customers will be served who come into the market after 6 P.M. and 9 P.M. on Saturdays and on days preceding holidays . . ." (R. 663). The hours established by the 1919 strike continued until 1937; in that and later years modifications of working hours and correlative marketing hours were made by collective bargaining agreement; in 1947 the closing hour, Monday through Saturday, was set at 6 P.M.,

and the time thus established has continued to the present (R. 663). As originally established, the limitation upon marketing hours "was inserted in the collective bargaining agreement in juxtaposition to, and as an implementation of, the Article specifying hours of work for butchers. In fact, through the years each change in hours of labor brought a corresponding change in market operating hours, until night work was finally eliminated in the Chicago area in 1947" (R. 672).

The contractual limitation upon marketing operating hours thus began "long before . . . [respondent] sold meat or Associated was organized" (R. 671). From the inception of respondent's operation of meat markets in the Chicago area in 1933, it entered into agreements with the unions containing these marketing hour restrictions, which were identical to agreements made with other meat market employers in the Chicago area (R. 663). Regulation of market operating hours by collective bargaining agreement is also in effect in other metropolitan areas (R. 664).

Market operating hours in the Chicago area was the subject of extensive negotiations in the course of collective bargaining eventuating in the agreements of 1957, 1959, and 1961 (R. 664-667). The method of bargaining pursued in these years, followed since 1941, was joint negotiation between an employer group and a union group (R. 664). Each group formulates its position independently (R. 664-665). The unions' demands are based on a preliminary survey of members, who are consulted in the course of negotiations and must ratify any agreement; the employers meet in advance of negotiations to explore their objectives, and caucus periodically to determine their bargaining position. (R. 665).

The proposals and counter-proposals made at the numerous meetings in the 1957 negotiations showed that the unions from the outset did not want night work; on their



part, the employers' demand for night operating hours was intertwined with the extension of working hours and the "flexible day," which meant starting later and working nights, as well as with various wage premiums "to sell" night work (R. 665). Associated Food Retailers joined the other employers in a proposal for Friday night operations, which explicitly called for extension of the work day on Friday to 9 P.M., and for the presence of a male employee on duty during these extended hours (R. 666). Associated's secretary and treasurer Bromann personally urged the unions' chief spokesman to accede to this proposal (*ibid.*). The unions refused to accept night operations (*ibid.*). The members of the largest local, by a secret ballot vote of 2,253 to 98, authorized a strike if necessary to avoid night operations (*ibid.*). The agreement which was reached in 1957 retained the existing limitation upon market operating hours (*ibid.*).

During the 1959 negotiations the union group was willing to bargain on night marketing hours (R. 666). However, in the absence of agreement upon a sufficient wage incentive, the limitation was retained in the contract which was consummated. (*ibid.*). In the 1961 negotiations, as in 1957 and 1959, the employer demands for night marketing operations were again intertwined with night working hours and wage incentives for night work (R. 666-667). As to the position of Associated Food Retailers in 1961, respondent itself observed that Associated did not oppose night work (R. 670). But the unions' opposition was steadfast throughout, as is manifest by a vote of respondent's meat cutters in October 1962 opposing night work by a 759 to 28 margin (R. 668; pl. exs. 11, 11A).

In resisting night operation, the unions' position is illuminated by the following circumstances: A self-service meat market cannot operate at night without employees on duty to rearrange and replenish stock in the counters, and to give customers necessary personal attention (R. 667).

672, 675). In most of respondent's stores outside the Chicago area, where night operations exist, meat cutters are on duty whenever a meat department is open after 6 P.M. (R. 667). In those self-service meat departments ostensibly operated without employees on duty after 6 P.M., requisite customer services in connection with meat sales is in fact performed by grocery clerks (R. 667). And respondent, outside the Chicago area, has extended meat department operation in a substantial number of its stores to 11 P.M., for six nights a week, and on Sundays (R. 667). Furthermore, within the Chicago area, the sale of delicatessen items after 6 P.M. from the self-service cases is by contract permissible provided that no employee shall handle or stock the cases after that hour; nevertheless, "practically" always during the time that the market is open after 6 P.M. the manager, or other employees, would be rearranging and restocking the delicatessen items in the cases (R. 667-668). Finally, even if it were practical to operate a self-service meat market after 6 P.M. without employees, night operations would add to the work load because of the labor required in getting the meats prepared for night sales and in putting the counters in order the next day (R. 668).

The District Court accordingly found that "Lifting the restriction on marketing hours would mean a return to longer hours and night work. This is evident from the face of the employer proposals, which included the 'flexible day,' night hours, and wage premiums 'to sell' night work, and from the practices of the trade, particularly in plaintiff's stores where night sales of fresh meat were authorized" (R. 672).

The District Court also addressed itself to the ostensible alternative that a self-service meat department could operate without any employees on duty after 6 P.M. The Court noted that "Only one proposal was ever made by . . . [respondent] in the course of the prolonged negotiations on all three contracts, which suggested night opera-

tions without butchers on duty, and that was submitted to the unions at the end of the day as negotiations were 'breaking up' on November 16, 1961" (R. 667), the last day of negotiations (R. 539-542). The Court observed that the unions "questioned the seriousness of that proposal under the circumstances" (R. 667). Even taking it at face value, the Court found that it "was contrary to the Union's self-interest. It meant that their work would be done by others unskilled in the trade, since the evidence showed that in stores where meat is sold at night it is impractical to operate without either butchers or other employees. Someone must arrange, replenish and clean the counters and supply customer services. In addition, that proposal would involve an increase in workload in preparing for the night work and cleaning the next morning" (R. 672).

The District Court therefore stated as its ultimate conclusion that (R. 672-673):

Thus, the unions' insistence on the retention of the marketing hour restriction was based on its desire to protect its right not to work at night, and to protect its work from being taken by others. Those facts and circumstances are inimical to plaintiff's theory that the unions insisted on the restriction as the tool of the employer group and at their behest. On the contrary, the evidence established that the restriction was imposed after arm's length bargaining, including an overwhelming strike vote against night work, and was fashioned exclusively by the unions to serve their own interests—how long and what hours members shall work, what work they shall do, and what pay they shall receive. These are not objects which the anti-trust laws proscribe. They are conditions of employment, and as such are clearly within the labor exemption of the Sherman Act.

The District Court alternatively observed that, the labor exemption aside, the legality of the limitation upon market operating hours "would then be adjudged as any other

contract between non-labor groups" (R. 675). As the limitation is not *per se* illegal, its validity depends on the application of the rule of reason (R. 675-676). The Court noted that there is "no evidence" that the limitation "destroyed competition among purveyors of fresh meat, created a monopoly, or adversely affected one purveyor more than another" (R. 676). Furthermore, the evidence did not "in any way establish that less meat is consumed in this area, in proportion to population and income, than in areas where fresh meat is sold at night. In fact, the objective statistics indicated that the restriction had no discernible effect" (R. 676). In addition, "the doubtful benefits of night operations to the industry" was evident from the fluctuating attitude of both the chains and independents during the course of the various contract negotiations" (R. 676-677). There is "no showing," moreover, that night "operations would result in economies or lower prices" (R. 677). Finally, the "only conceivable deleterious effect on the public from the restriction here is that those persons who find it more convenient to shop for meat at night are deprived of that convenience. However, the fact that some consumers would prefer longer than 54 hours during the week within which to buy fresh meat can hardly constitute the basis for holding a restriction on night hours to be an unreasonable restraint of trade" (R. 677). Accordingly, the Court concluded, the limitation upon market operating hours "imposed no 'unreasonable' restraint on trade" (R. 678).

## II. The Decision Of The Court of Appeals

The Court of Appeals concluded that setting market operating hours was an exclusive managerial prerogative wholly outside the unions' rightful concern (*infra*, pp. 6a-8a). Contractual limitation of market operating hours was illegal even though the limitation "was imposed after arm's length bargaining . . ." (*infra*, p. 6a). The

requisite union abetment of non-labor groups united in a conspiracy to violate the antitrust laws was sufficiently established by an agreement secured by a union in consummation of ordinary collective bargaining negotiations (*infra*, pp. 10a-11a). According to the Court of Appeals, "whether it be called an agreement, a contract or a conspiracy, is immaterial" (*infra*, p. 11a). It rejects "defendants' contention that an agreement pertaining to market operating hours is exempt from the antitrust laws since it was entered into in the self-interest of the employees to attain or maintain conditions deemed by the union relevant to the employees' working welfare" (*infra*, p. 5a). And, the labor exemption aside, the limitation upon market operating hours is not within the rule of reason because it does not promote competition (*infra*, p. 8a).

#### REASONS FOR GRANTING THE WRIT

This case should be heard in conjunction with *United Mine Workers v. Pennington*, No. 927, October Term 1963, in which this Court granted certiorari on May 18, 1964. The decisions below in both cases amply demonstrate the need for a fresh canvas by this Court of the relationship of labor activity to the antitrust laws. Together the two cases afford a superior occasion for informed determination because of the opportunity presented to focus on a common problem through the separate perspective furnished by different but related individual situations. Enhanced insight into each case and the whole of the field would be provided by joint consideration.

Regulation of market operating hours by collective bargaining agreement is a subject which is itself intrinsically important. It has existed in the Chicago area for more than 44 years. In that area it presently covers a population of 6,220,913.<sup>2</sup> It applies to more than 1,500 stores

<sup>2</sup> United States Census of Population, 1960, United States Summary, p. 1-292.



(R. 670, 446-447, 606-608, def. ex. 8). The butchers benefiting from it number 8,215 (pl. ex. 1, R. 84-86, Tr. 149). As the District Court found, "Similar contract provisions, or with variants for a single night operation, are in operation in other metropolitan areas" (R. 664). Thus, regulation of market operating hours by collective bargaining agreement elsewhere throughout the country covers territories with a population of 3,717,208 (*infra*, pp. 31a-34a). Included are the major metropolitan areas of Cleveland, Seattle, and St. Paul (*infra*, pp. 31a, 32a, 34a). In Cleveland, the closing hour of 6:00 P.M., which has existed at least since 1945, applies to the entire store, and not to the meat department alone (*infra*, p. 31a).

#### I. The Question Pertaining To The Applicability Of The Labor Exemption

1. *The end served by the limitation:* As the District Court found, "the unions' insistence on the retention of the marketing hour restriction was based on its desire not to work at night, and to protect its work from being taken by others. . . . [T]he evidence established that the restriction was imposed after arm's length bargaining, including an overwhelming strike vote against night work, and was fashioned exclusively by the unions to serve their own interests—how long and what hours members shall work, what work they shall do, and what pay they shall receive" (R. 672). The court below would drain this determination of its relevance by its *ipse dixit* that the "rights of employees" on the question of hours is confined to "the number of hours per day that any one shall be required to work . . ." (*infra*, p. 7a). According to this thesis, while employees may insist that they shall not work longer than a particular number of hours during a day, they have no self protective interest in whether they shall work at night, through midnight or the dawn, on Sundays, or on holidays. The practical import is readily discernible from the 33 stores operated by respondent

outside the Chicago area, where no limitation upon market operating hours exists: two stores operate the meat department to 11:00 P.M., eight stores operate the meat department six nights per week to 9:00 P.M., Monday through Saturday, and seven stores operate the meat department on Sundays (R. 667; pl. ex. 13 n, o). Adoption of the view of the court below means that employees cannot protest working on week days to 11:00 P.M., working on Saturdays after 6:00 P.M., or working on Sundays. The court below disdains as an "emotionally" expressed appeal the position that "union butchers should be given an opportunity to be with their children on Friday evenings . . ." (*infra*, p. 9a). And, since the butchers cannot protest the parts of the day or the days of the week they shall work, it is difficult to understand by what logic the court below grants them the right to protest the number of required hours of work per day.

The court below justifies its conclusion upon the ground that the determination of the hours that a place of business shall be open is a managerial prerogative to be exercised exclusively by the proprietor. Its thinking can be gleaned from the phrases it employed to express this view: "responsibilities resting upon a proprietor," "proprietary functions," "the judgment of the owner of the business," "the prerogatives of the employer," his "inherent proprietary rights," the "proprietary function which an employer has the exclusive right to determine" (*infra*, pp. 6a-8a). The employees can have no say, therefore, in determining the parts of the day or the days of the week that they shall work because this would interfere with the employer's prerogative to decide for himself when his business shall be open. The essence of this view is that an operational decision by management must be given exclusive dominion notwithstanding its detrimental impact upon the working welfare of the employees.

This view is not new to the court below, and it has been expressly disapproved by this Court. *Railroad Telegra-*

*phers v. Chicago and Northwestern R. Co.*, 362 U.S. 330, reversing, 264 F.2d 254 (C.A. 7). In the latter case the union contested the employer's decision to abandon or consolidate unnecessary railroad stations because it would adversely affect the employment of telegraphers. The court below held that the union's demand that no position "will be abolished except by agreement between the Carrier and the Organization" was outside the valid scope of bargainable issues. 264 F.2d at 256, 260. And this for the reason that the "proposed contract change in the case before us represents an attempt to usurp legitimate managerial prerogative in the exercise of business judgment with respect to the most economical and efficient conduct of its operations" (*id.* at 259). This earlier expressed monarchical concept of absolute managerial prerogative—highlighted in this case by the anachronistic advertence to the employer's role "as master in the master and servant relationship" (*infra*, p. 8a)—underpins the present decision as well.

But this Court disapproved. Addressing itself precisely to the claim of usurpation of managerial prerogative, and observing that at issue was "the union's effort to negotiate about the job security of its members," this Court stated that "We cannot agree with the Court of Appeals. . . . It is too late now to argue that employees can have no collective voice to influence railroads to act in a way that will preserve the interests of the employees as well as the interests of the railroad and the public at large." 362 U.S. at 336, 338.

In this case the District Court explicitly drew on this Court's decision in *Chicago and North Western* to support its conclusion. After quoting from this Court's opinion, the District Court explained that: "Under this rationale, since the record here shows that night meat sales, even in self-service markets, require as a matter of practical operation the services of either butchers or other employees, the unions' insistence on the restriction to

protect their work and job security, should be deemed a proper labor goal, and in no way a usurpation of managerial prerogative. Therefore, that decision further substantiates the conclusion that the marketing hour restriction here, in protecting butchers against night hours and loss of work is within the labor exemption of the Sherman Act" (R. 675). The contrary conclusion reached by the court below resurrects the theory that this Court interred.

The decision below is also incompatible with the determination of the National Labor Relations Board, approved by the Courts of Appeals for the Fifth and District of Columbia Circuits, that an employer is required to bargain with the representative of its employees concerning a decision to subcontract a business operation. *Town & Country Mfg. Co.*, 136 NLRB 1022, enforced, 316 F.2d 846 (C.A. 5); *Fibreboard Paper Products Corp.*, 138 NLRB 550, enforced 322 F.2d 411 (C.A.D.C.), cert. granted, 375 U.S. 963. The decision of the Board, like the decision of the District Court in this case, was strongly influenced by this Court's rationale in *Chicago and North Western*. 136 NLRB at 1028, n. 10; 138 NLRB at 552-553. The dissenting position before the Board, like the indistinguishable view of the Court of Appeals in this case, is based on the premise that whether to end or continue a business operation is "a managerial determination, and, therefore, a prerogative exercisable without negotiation" (136 NLRB at 1033). This Court has granted certiorari to settle the question. *Fibreboard Paper Products Corp. v. N.L.R.B.*, 375 U.S. 963. The cognate question presented in this case should similarly be heard at the same term to give the Court a well-rounded oversight of the entire picture.

The foreshortened view of the court below is also out of harmony with the basis of this Court's decision in *Los Angeles Meat and Provision Drivers Union v. United States*, 371 U.S. 150. Notwithstanding a stipulated violation of the antitrust laws, the Court carefully observed

that the redress it upheld against the offending union did not impair any interest the union had in "job or wage competition or economic interrelationship of any kind..." (*id.* at 103). "To believe that labor union interests may not properly extend beyond mere direct job and wage competition is to ignore not only economic and social realities so obvious as not to need mention, but also the graphic lessons of American labor union history." Concurring opinion, Mr. Justice Goldberg, *id.* at 104. The decision below was reached in total disregard of "job or wage competition or economic interrelationship of any kind..." It is similarly antagonistic to the tenor of *John Wiley & Sons v. Livingston*, 376 U.S. 543, 549: "The objectives of national labor policy, reflected in established principles of federal law, require that the rightful prerogative of owners independently to rearrange their businesses and even eliminate themselves as employers must be balanced by some protection to the employees from a sudden change in the employment relationship."

In short, regulation of market operating hours by collective bargaining agreement cannot be deprived of its labor attributes by invoking the talisman of "managerial prerogative." It is no different from, and no less within the ambit of collective bargaining than, a contest over the abandonment or consolidation of unnecessary railroad stations (*Railroad Telegraphers v. Ch. & N.W. R. Co.*, 362 U.S. 330); the sale and use of labor saving machinery (truck mixers) (*United States v. Hod Carriers*, 313 U.S. 539, affirming 37 F. Supp. 191 (N.D. Ill.)); the use of recorded music supplanting the services of live musicians (*United States v. American Federation of Musicians*, 318 U.S. 741, affirming, 47 F. Supp. 304 (N.D. Ill.)); in the ladies garment industry, "(1) Limitations on competition among contractors by restricting manufacturers' and jobbers' use of contractors, primarily through a contract-designation procedure, and by determining prices to be paid to contractors for their services, and (2) Restraints



on production by members of the employer associations, resulting from contract limitations on the opening of additional plants or the acquisition of interests in other concerns producing women's sportswear" (*California Sportswear & Dress Assn.*, 54 FTC 835); and contracting out a business operation in preference to its performance with the employer's own equipment (*Fibreboard Paper Products Corp.*, 138 NLRB 550, enforced, 322 F.2d 411 (C.A.D.C.), cert. granted, 375 U.S. 963; *Town & Country Mfg. Co.*, 136 NLRB 1022, enforced, 316 F.2d 846 (C.A. 5).

The decision below is a throwback to the days preceding the Norris-LaGuardia Act and that Act's infusion of the labor exemption to the antitrust laws with its contemporary meaning. "The committee reports on the Norris-LaGuardia Act reveal that many of the injunctions which were considered most objectionable by the Congress were based upon complaints charging conspiracies to violate the Sherman Anti-Trust Act." *Milk Wagon Drivers Union v. Lake Valley Farm Products*, 311 U.S. 91, 101. Furthermore, the plain basis for the decision below is the court's distaste for the absence of night marketing and the translation of that distaste into a declaration of illegality. The labor exemption was designed to extirpate such judicial fiat. A "union's exemption from the Sherman Act is not to be determined by a judicial judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means." *Allen Bradley Co. v. Local Union No. 3, IBEW*, 325 U.S. 797, 810-811.

2. *The means used to get and keep the limitation:* Independently of the end served by the regulation of market operating hours, the means used to get and keep the limitation place it within the labor exemption. To implicate a labor organization in a violation of the antitrust laws, settled law requires that the activity of the union be shown to be in aid of a combination of business men them-

selves engaged in a scheme violative of the antitrust laws. Absent union abetment of a conspiracy among business men, union activity is exempt from the Sherman Act. *Allen Bradley Co. v. Local Union No. 3, IBEW*, 325 U.S. 797, 801, 807, 808, 810.

Accordingly, in acknowledgement of settled law, to show a combination of business men united in an antitrust violation, the complaint alleged a mercantile conspiracy to suppress commercial competition in the sale of fresh meat after 6:00 P.M. among Associated Food Retailers, its members, and its secretary and treasurer; and to draw the unions into this orbit, the complaint averred that they abetted Associated's alleged scheme as co-conspirators (R. 23-24, ¶¶ 16(d), (e), (f), 18, 19, 20). But, as the District Court found, the alleged conspiracy "failed to withstand the 'crucible of trial'" (R. 670). The District Court dismissed the complaint against Associated and Bromann at the close of plaintiff's case because "the record was devoid of any evidence to support a finding of conspiracy" (R. 670, 683-684, 658). It found that, "realistically speaking, there is absent any evidence showing Bromann or Associated, or both, conspired with defendant Unions in forcing the restrictive clause upon Jewel" (R. 684). The lack of evidence of conspiracy at the close of plaintiff's case was confirmed by positive evidence disproving conspiracy at the close of all the evidence. The District Court found that (R. 670):

The record showed only that Bromann, on behalf of Associated, which represented some 1,000 individual and independent food stores, dealt with the unions at arm's length. At no time did he receive a direction to demand a 6 P.M. closing; nor did he make any such demand. On the contrary, Associated, through Bromann, joined in the all-employer offer of November 15, 1957, demanding the elimination of the restriction on night marketing; and specifically requested that change from the union representative at a sub-committee meeting. Even Vorbeck's letter of October 1, 1961, to his company [Jewel], stated that Associated

did not oppose night work, but that some opposition came from other chains. This fluctuating opposition by some employers to night operations because of their high cost is hardly tantamount to a conspiracy with the unions. Hence, any attempt to reassert that theory must fail.

As the District Court further found, "the marketing hour restriction originated as a result of the Union's strike against the 81 hour, 7 day work week in 1919, long before plaintiff sold meat or Associated was organized" (R. 671).

Since the unions could not be held as co-conspirators in a conspiracy which did not exist, the court below broke new ground. It held that the containment of the limitation upon market operating hours in a collective bargaining agreement which is the consummation of joint negotiations of itself establishes that it is the product of an illicit business men-union combination (*infra*, pp. 5a, 7a, 10a-11a).<sup>3</sup> In a verbal miasma, the court below stated that "the unions, Associated Food Retailers and Bromann, its secretary, entered into a combination or agreement, which constituted a conspiracy"; it erroneously attributed to this Court the use of the words 'conspiracy' and 'contract' interchangeably;<sup>4</sup> and it concluded that "Whether it be

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<sup>3</sup> The new theory is so gross a shift from the complaint that "elemental concepts of procedural due process" preclude its advancement. *N.L.R.B. v. H. E. Fletcher Co.*, 298 F. 2d 594, 601 (C.A. 1). If certiorari is granted, we reserve the right to argue this point.

<sup>4</sup> Cited to support this conclusion, *United Brotherhood of Carpenters v. United States*, 330 U.S. 395, establishes the opposite, for it is explicitly premised on *Allen Bradley*, this Court stating that "Since these cases were taken the important question, of the applicability of the Sherman Act to a conspiracy between labor union and business groups has been decided by us. We held that such a conspiracy to restrain trade violated the Sherman Act" (*id.* at 400, emphasis supplied).

called an agreement, a contract or a conspiracy, is immaterial" (*infra*, p. 11a). Since the only identifiable element in this new theory is common participation in joint negotiations, its reach is not confined to Associated but engulfs all employers engaged in group bargaining. Its enormity is evident from the District Court's findings that the employer group and the union group each "formulates its position independently" (R. 664-665), and that the limitation upon market operating hours "was imposed after arm's length bargaining . . ." (R. 672). And the new theory destroys the labor exemption. For unions operate through agreements reached as a result of collective bargaining, and if that act suffices to establish forbidden concert with a non-labor group, immunity vanishes.

The nub of the problem was laid bare by this Court in *Allen Bradley*. It stated that (325 U.S. at 809):

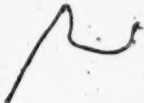
Employers and the union did here make bargaining agreements in which the employers agreed not to buy goods manufactured by companies which did not employ the members of Local No. 3. *We may assume that such an agreement standing alone would not have violated the Sherman Act. But it did not stand alone. It was but one element in a far larger program in which contractors and manufacturers united with one another to monopolize all the business in New York City, to bar all other business from that area, and to charge the public prices above the competitive level. [Emphasis supplied.]*

The court below negates this Court's assumption that a bargaining agreement, "standing alone," does not violate the Sherman Act. All others act on that assumption. But for the court below the prevailing view is that joint negotiations consummating in uniform collective bargaining agreements are not and do not evidence combinations of

business men leagued with a union engaged in conduct violative of the antitrust laws.<sup>5</sup>

The prevailing view is inherent and inevitable granting the premise of decision in *Allen Bradley*. If the regulation of market operating hours is invalid at all, it would be so only because it is the product of activity by the unions to aid and abet business men in violating the antitrust laws. Any injunction against bargaining for, or striking to obtain, the marketing provision would have to be confined to "when such activities are carried on in combination and conspiracy with non-labor groups," and would not extend to "any of said activities when said activities are not in combination with non-labor groups. . . ." *Allen Bradley v. Local Union No. 3, IBEW*, 164 F.2d 70, 75 (C.A. 2). This limitation of the injunction was required by the terms of this Court's remand in *Allen Bradley* ordering that the injunction be confined to "only those prohibited activities in which the union engaged in combination 'with any . . . non-labor group. . .'" 325 U.S. at 812. See also, *Schatte v. International Alliance*, 182 F.2d 158, 167 (C.A. 9), cert. denied, 340 U.S. 827; *Pevely Dairy Co. v. Milk Wagon Drivers Union Local 603*, 174 F. Supp. 229 (E.D. Mo. E.D.). Accordingly, under any circumstances, the antitrust laws leave the unions free, so long as they act independently of a non-labor group, to bargain and strike for the market operating hours provision. Any controversy concerning it would clearly be a labor dispute within the meaning of the Norris-LaGuardia Act (*Railroad Telegraphers v. Ch. & N.W. R. Co.*, 362 U.S. 330; *Aetna Freight Lines, Inc. v. Clayton*, 228 F.2d 385,

<sup>5</sup> *California Sportswear & Dress Association, Inc.*, 54 FTC 835, 885-886; *Meier & Pohlman Furniture Co. v. Gibbons*, 233 F. 2d 296, 302 (C.A. 8), cert. denied, 352 U.S. 879; *Adams Dairy Co. v. St. Louis Dairy Co.*, 260 F. 2d 46, 49 (C.A. 8); *Rossi v. McCloskey & Co.*, 149 F. Supp. 639, 640 (D.C.E.D. Pa.); *Cox, Labor and The Anti-Trust Laws—A Preliminary Analysis*, 104 Penn. L. Rev. 252, 271.





386-387 (C.A. 2), cert. denied, 351 U.S. 950), and the strike would hence not be enjoined (*Hunt v. Crumboch*, 325 U.S. 821, 824). It would be stultifying to say that a provision for which a union may strike may not validly be incorporated in a collective bargaining agreement in lieu or settlement of the strike.<sup>6</sup>

The gross shift from settled law indulged by the court below is further apparent from its direction to the District Court to enter "an injunction substantially as prayed in the complaint herein . . ." (*infra*, p. 11a). Paragraph 3 of the prayer would enjoin enforcement of any limitation upon market operating hours, and paragraph 4 would enjoin any strike or picketing "for the purpose of restricting plaintiff's hours of operation," with no qualification that the prohibition be confined to activity in concert with a non-labor group (R. 27). This blanket restraint is directly contrary to this Court's express edict in *Allen Bradley*.

Quoting from *Interstate Circuit v. United States*, 306 U.S. 208, 227, the court below invokes the doctrine of "conscious parallelism" to support its conclusion (*infra*, p. 10a). There is, first, no factual predicate for application of the doctrine. For the short of it is that while all employers, including Associated, entered into the agreement, none of the employers, including Associated, did so in any wise for reasons which paralleled the unions, but indeed actively sought to dissuade the unions from their position. This aside, the court below mistakes the import of parallel action. This Court, as it has explained, "has never held that proof of parallel business behavior conclusively establishes agreement or, phrased differently, that such behavior itself constitutes a Sherman Act offense"; "'conscious parallelism' has not yet read con-

<sup>6</sup> Cox, *Labor and The Antitrust Laws—A Preliminary Analysis*, 104 Penn. L. Rev. 252, 271; Dodd, *The Supreme Court And Organized Labor, 1944-45*, 58 Harv. L. Rev. 1018, 1051.

spiracy out of the Sherman Act entirely." *Theatre Enterprises, Inc. v. Paramount Film Distributing Corp.*, 346 U.S. 537, 541. Following this Court's lead other courts of appeals in non-labor contexts have held, in conflict with the court below, that concert is not inferable from parallel action based on independent decision.<sup>7</sup> In this case, based on the findings that the employer group and the union group each "formulates its position independently" (R. 664-665) and that agreement was reached "after arm's length bargaining" (R. 672), it mocks the meaning of "conscious parallelism" to infer illicit concert.

The bankruptcy of the position below is finally shown by the court's statement that Associated and the unions interposed a "common defense" to the conspiracy charge (*infra*, p. 11a). A joint plea by persons that they are not conspirators can hardly be traduced into proof that they are. Especially is this so when all that is relied upon is "Associated's motion," granted by the court below, that "the Unions' brief stand as the brief of Associated and Bromann, its secretary" (*infra*, p. 11a, n. 5). The court below neglects to mention that in consenting to the grant of the motion the unions were at pains to state that "appellees in No. 14196 [the unions] wish it to be clearly and distinctly understood that their attorneys do not represent appellees in No. 14119 [Associated and Bromann], that the brief for appellees in No. 14196 is not being prepared in cooperation or consultation with appellees in No. 14119 or the latter's attorneys, and that appellees in No.

<sup>7</sup> *Winchester Theater Co. v. Paramount Film Dist. Corp.*, 324 F. 2d 652, 653-654 (C.A. 1); *Independent Iron Works v. United States Steel Corp.*, 322 F. 2d 656, 661 (C.A. 9); *Gold Fuel Service v. Esso Standard Oil Co.*, 306 F. 2d 61, 64 (C.A. 3); *Delaware Valley Marine Supply Co. v. American Tobacco Co.*, 297 F. 2d 199, 202-203 (C.A. 3), cert. denied, 369 U.S. 839. See also, Report of Atty. Gen. Natl. Comm. to Study the Antitrust Laws, 36-42 (1955); Turner, *The Definition of Agreement Under The Sherman Act: Conscious Parallelism and Refusals to Deal*, 75 Harv L. Rev. 655 (1962).

14196 are in no wise associated with appellees in No. 14119 in the conduct of this litigation." It is a measure of the approach of the court below that it recites the motion but not the contents of the consent. But it would make no difference even if there were thorough concert in presenting a common defense. The "Sherman Act does not prohibit two or more persons from associating together in an attempt to persuade the legislature or the executive to take particular action. . . ." *Eastern Railroad Presidents Conference v. Noerr Motor Freight*, 375 U.S. 127, 136. Nor, we add, the judiciary.

## II. The Question Pertaining To The Exclusive Primary Jurisdiction Of The National Labor Relations Board

Based on its determination that regulation of market operating hours is designed to serve labor's interests in "how long and what hours members shall work, what work they shall do, and what pay they shall receive," the District Court concluded that it is part of "conditions of employment . . ." (R. 672-673). Based on its determination that setting market operating hours is an exclusive managerial prerogative, the Court of Appeals concluded that it "is not a condition of employment, contrary to the district court's finding" (*infra*, p. 7a). The question presented is whether either determination is within judicial competence or whether resolution of the issue lies instead within the exclusive primary jurisdiction of the National Labor Relations Board because it falls within the regulatory scope of the National Labor Relations Act.<sup>8</sup>

<sup>8</sup> On the first appeal the court below held that the subject was not within the exclusive primary jurisdiction of the Board. 274 F. 2d at 220-221, *infra*, pp. 16a-18a. Questions decided on the first appeal are of course preserved for determination by this Court on its review following the second appeal. *Mercer v. Theriot*, 32 U.S. Law Week 4386 (S. Ct., May 4, 1964). Petitioners explicitly reserved the question on the second appeal, stating to the court below that "In view of . . . [its] prior decision on the first appeal, we do not in this brief argue, but we do not waive, our

Collective bargaining "in respect of rates of pay, wages, hours of employment, or other conditions of employment" is mandatory. NLRA, §§ 9(a), 8(d), 8(a)(5), 8(b)(3), 7. Negotiation of market operating hours is therefore obligatory because of its integral relationship to these subjects. The content of the bargain is left to the parties subject only to the requirement that they treat with each other in good faith. Accordingly, whether an agreement should regulate market operating hours "is an issue for determination across the bargaining table" (*N.L.R.B. v. American National Ins. Co.*, 343 U.S. 395, 409); "... Congress intended that the parties should have wide latitude in their negotiations, unrestricted by any governmental power to regulate the substantive solution of their differences" (*N.L.R.B. v. Insurance Agents' International Union*, 361 U.S. 477, 488).<sup>9</sup> And to secure accord part of the means protected by the National Labor Relations Act is the right to strike on the union's part and the exertion of countervailing economic pressure on the employer's side.<sup>10</sup>

In end and means, therefore, the subject of market operating hours is within the protected ambit of the National Labor Relations Act. If not, it is then necessarily within the rubric of activity prohibited by that Act. The unions have insisted in collective bargaining upon the limitation on market operating hours. To insist upon a non-mandatory subject is to refuse to bargain, for "it is lawful to insist upon matters within the scope of mandatory

position that the controversy is within the exclusive regulatory scope of the National Labor Relations Act and hence outside the jurisdiction of the District Court" (p. 53, n. 13). The question is in any event jurisdictional and therefore can be raised at any time in the course of the proceeding.

<sup>9</sup> See also, Local 24, *Teamsters v. Oliver*, 358 U.S. 283, 295; *Terminal R.R. Assn. v. Railroad Trainmen*, 318 U.S. 1, 6.

<sup>10</sup> *Division 1287, Amalgamated Association v. Missouri*, 374 U.S. 74; *N.L.R.B. v. Insurance Agents' International Union*, 361 U.S. 477, 489; *N.L.R.B. v. Lion Oil Co.*, 352 U.S. 282, 291.

bargaining and unlawful to insist upon matters without . . ." *N.L.R.B. v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342, 349 (emphasis supplied). The NLRB order which ensues would require cessation from that insistence (*Wooster Division of Borg-Warner Corp.*, 113 NLRB 1288, 1297, affirmed, 356 U.S. 342), as well as from auxiliary conduct like strikes designed to effectuate it (*International Longshoremen's Association*, 118 NLRB 1481, 1483, remanded, 277 F.2d 681 (C.A.D.C.); see also, *Local 164, Brotherhood of Painters*, 136 NLRB 997, 1001-03, enforced, 293 F.2d 133 (C.A.D.C.), cert. denied, 368 U.S. 824).

One way or the other, therefore, the controversy can be conclusively determined by the Board, either to validate or illegalize the union's conduct, and effectively to stop it if illegal. And the bedrock determination whether market operating hours is a mandatory or permissive subject of collective bargaining necessarily belongs initially to the Board. The court below directs entry of an injunction substantially as prayed in the complaint (*infra*, p. 11a). The complaint requests that "the restriction on hours . . . be declared illegal, null and void, and that defendants be enjoined from enforcing said restriction in [the collective bargaining agreements] . . . or any other rule, contract, or restriction having a similar effect or purpose" (R. 27). Were the Board to find that marketing hours is a mandatory subject of negotiation, it would require petitioners and respondent to bargain with each other on the subject should either refuse to do so. Thus the District Court is instructed to enjoin as a violation of the Sherman Act what the Board may compel as a duty under the National Labor Relations Act. This is an impossibility. A principal function of the doctrine of primary jurisdiction is to avoid just such "uncoordinated and conflicting requirements." 3 Davis, Admin. Law Treatise, § 19.01, p. 5 (1958). "Otherwise, we might have the spectacle of courts throughout the country enjoining practices as violations of the anti-trust laws even though the agency specifically authorized



to deal with them has determined or may decide, subject to judicial review, that such practices serve the interests" of the regulatory policy committed to the agency's administration. *S. S. W., Inc. v. Air Transport Ass'n of America*, 191 F.2d 658, 663 (C.A.D.C.). See also, von Mehren, *The Antitrust Laws and Regulated Industries: The Doctrine of Primary Jurisdiction*, 67 Harv. L. Rev. 929, 965-966 (1954).

Avoidance of such collision is the commanding reason underlying preemption of state action in favor of adjudication by the Board and it applies in the present context as well. Had the instant complaint been filed in a state court alleging a violation of a state antitrust statute, dismissal of the complaint in deference to the exclusive jurisdiction of the Board would be required. This is the teaching of this Court's decisions in *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, and *Local 24, International Brotherhood of Teamsters v. Oliver*, 358 U.S. 283. *Garmon* teaches that where activity is *arguably* subject to the protection of Section 7 or the prohibition of Section 8 of the National Labor Relations Act, exclusive competence to decide the question resides with the National Labor Relations Board.<sup>11</sup> *Oliver* teaches that state prohibition is excluded "even though that with which the federal law is concerned as a matter of labor relations be related by the State to the more inclusive area of restraint of trade" (358 U.S. at 297).<sup>12</sup>

The rationale which requires a state court to defer to the jurisdiction of the Board applies equally to a federal court. *Garmon* itself states that "When an activity is arguably subject to § 7 or § 8 of the Act, the States as well as

<sup>11</sup> See also, *Local 20, Teamsters v. Morton*, 32 U.S. Law Week 4405 (S. Ct., May 25, 1964); *Local 100, United Association v. Borden*, 373 U.S. 690; *Local 207, Bridge Workers v. Perko*, 373 U.S. 701; *MEBA v. Interlake Steamship Co.*, 370 U.S. 173.

<sup>12</sup> See also, *Weber v. Anheuser Busch, Inc.*, 348 U.S. 468, 472-473, 479, 481.

the federal courts must defer to the exclusive competence of the National Labor Relations Board . . ." (359 U.S. at 245, emphasis supplied). This has long been settled; indeed, the original displacement of the state courts was based on the fact that not even a federal court could act. "The same reasoning which prohibits federal courts from intervening in such cases, except by way of review or on application of the federal Board, precludes state courts from doing so: . . . And the reasons for excluding state administrative bodies from assuming control of matters expressly placed within the competence of the federal Board also exclude state courts from like action." *Garner v. Teamsters Union*, 346 U.S. 485, 491. See also, *Weber v. Anheuser Busch, Inc.*, 348 U.S. 468, 479 and n. 8; *Actua Freight Lines, Inc. v. Clayton*, 228 F. 2d 385, 389 (C.A. 2), cert. denied, 351 U.S. 950. For action by a federal court, no less than by any other tribunal, creates "potential conflict of two law-enforcing authorities, with the disharmonies inherent in two systems, . . . of inconsistent standards of substantive law and differing remedial schemes" (359 U.S. at 242).

Nor does it make a difference that the source of law invoked in the federal court is the Sherman Antitrust Act. The provision of the collective bargaining agreement at issue in *Oliver* pertained to minimum equipment rental of leased vehicles. The Court found the provision to be a mandatory subject of collective bargaining because it was designed to maintain the "basic wage structure established by the collective bargaining agreement" and to prevent "progressive curtailment of jobs" (358 U.S. at 293-294). While the provision in *Oliver* was attacked via state antitrust law, whereas the provision here is attacked via federal antitrust law, the difference in the source of the attack cannot alter the containment of the subject within the scope of mandatory collective bargaining. Whether it is within this scope depends solely upon whether it "is a subject within the phrase 'wages, hours, and other terms and conditions of employment' which defines mandatory

bargaining." *National Labor Relations Board v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342, 349. It is evident that the minimum equipment rental provision in *Oliver* would not be any less a subject of mandatory collective bargaining had the suit been instituted in a federal district court based on the federal antitrust laws rather than in an Ohio court based on the state antitrust laws. And the same must be true of the marketing provision in this case.

To be sure, in *Oliver*, the Court stated that "federal law sets some outside limits (not contended to be exceeded here) on what their [the union's and employer's] agreement may provide, see *Allen Bradley Co. v. Local Union*, 325 U.S. 797; cf. *United States v. Employing Plasterers Ass'n.*, 347 U.S. 186, 190." 358 U.S. at 296. But the condemned aspects of the agreements in *Allen Bradley and Plasterers* pertained to compacts among business men to exclude competitors from the market. These were trade restraints effectuated by a combination of business men, aided by a union, in which the activity did not directly serve a collective bargaining objective and was related to wages and work *only* in the sense that the greater profits realized because of the activity enabled the employers to pay better wages and provide more work. The National Labor Relations Act does not require bargaining on a proposal to exclude competitors from the market or to fix prices on the theory that diminution in competition will make the companies more prosperous and thus enable them to increase wages. But in this case, as in *Oliver*, the agreement pertains directly to a collective bargaining subject, and here, as there, the National Labor Relations Act controls. At the least the subject of the agreement is surely arguably within the regulatory scope of the National Labor Relations Act and hence the National Labor Relations Board alone is empowered to determine the question in the first instance. Prior resort to the Board is especially appropriate because the Sherman "Act is aimed primarily at combinations having commercial objectives and is ap-

plied only to a very limited extent to organizations, like labor unions, which normally have other objectives.” *Klor’s, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207, 212, n. 7.

The principles underlying the preemption of state action thus control here as well. As has been observed, “even though the thinking about” preemption in the context of the National Labor Relations Act “has focused upon the problem of federalism, the problem still continues to be one of primary jurisdiction. When relief is sought in a federal court instead of in a state court, the problem of whether the court should defer to the Board is much the same.” 3 Davis, *Admin. Law Treatise*, § 19.05, p. 23 (1958). “The principal reason behind the doctrine [of primary jurisdiction] is recognition of the need for orderly and sensible coordination of the work of agencies and of courts.” *Id.* at 5. “. . . [B]efore the particular agency has defined the particular regulatory policy in the particular case, the courts are not well equipped to make initial decisions involving accommodation of the antitrust policy to the regulatory policy.” *Id.* at 25. And so, “A court should not act without knowing the agency’s specific regulatory policy with respect to the particular problem in the particular circumstances.” *Id.* at 27.

For a court to decline or defer jurisdiction over an alleged antitrust violation in favor of an agency’s determination of interrelated cognate questions falling within the purview of a regulatory statute is of course not new doctrine. Recourse to the agency has been required under the Interstate Commerce Act,<sup>13</sup> the Shipping Act,<sup>14</sup> the

<sup>13</sup> *United States v. P. & A. Ry. & Nav. Co.*, 228 U.S. 87, 106-108; *Keogh v. Chi. & N.W. Ry. Co.*, 260 U.S. 156; cf., *United States v. St. P.R.R. Co.*, 352 U.S. 59.

<sup>14</sup> *United States Navigation Co. v. Cunard S.S. Co.*, 284 U.S. 570; *Far East Conference v. United States*, 342 U.S. 570; cf., *Federal Maritime Board v. Isbrandtsen Co.*, 356 U.S. 481, 496-500.

Packers and Stockyards Act,<sup>15</sup> and the Civil Aeronautics Act.<sup>16</sup> This Court has stressed the applicability of the doctrine of primary jurisdiction to situations in which "administrative uniformity" and "administrative experience" were requisite.<sup>17</sup> "That doctrine requires judicial abstention in cases where protection of the integrity of a regulatory scheme dictates preliminary resort to the agency which administers the scheme."<sup>18</sup> These considerations are decisive here. Under the National Labor Relations Act, "Congress has expressed its judgment in favor of uniformity" (*Guss v. Utah Labor Relations Board*, 363 U.S. 1, 10-11), and the "unifying consideration" of this Court's "decisions has been regard to the fact that Congress has entrusted administration of the labor policy for the Nation to a centralized administrative agency, armed with its own procedures, and equipped with its specialized knowledge and cumulative experience" (*San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 242). Whether the doctrine of primary jurisdiction should apply to claimed violations of the Sherman Antitrust Act which are arguably within the regulatory scope of the National Labor Relations Act is a question of fundamental importance which this Court should decide.

### III. The Question Pertaining To The Rule Of Reason

The labor exemption aside, the District Court alternatively concluded that the limitation upon market operating hours "imposed no 'unreasonable' restraint on trade" (R. 678). In reaching this conclusion the District Court relied explicitly on this Court's decision in *Board of Trade v.*

<sup>15</sup> *McCleneghan v. Union Stock Yards Co.*, 298 F. 2d 659 (C.A. 8).

<sup>16</sup> *Pan American World Airways v. United States*, 371 U.S. 296; *S.S.W., Inc. v. Air Transport Ass'n of America*, 191 F. 2d 658 (C.A.D.C.).

<sup>17</sup> *United States v. Radio Corp. of Amer.*, 358 U.S. 334, 347-348.

<sup>18</sup> *United States v. Philadelphia National Bank*, 374 U.S. 321, 353.



*United States*, 246 U.S. 231, stating that this Court had held "that a limitation on operating hours imposed by a trade organization was reasonable and did not offend the Sherman Act" (R. 677). The court below, on the contrary, determined that reliance on *Board of Trade* was "not justified" (*infra*, p. 9a). But it was the court below which mistook the meaning of *Board of Trade* and reached a result in conflict with it.

This Court upheld a rule of the Chicago Board of Trade prohibiting members who bought after the close of business from making such purchases at any price other than the closing bid at the Exchange's "call" session. Thus, unlike the instant limitation, the Board of Trade rule did fix price. Nevertheless, the Court treated the rule, not as a species of price-fixing, but as a regulation of the hours of trading, the effect of which was, not to diminish competition in the class of transactions involved, but to bring the class of transactions into the regular and fully competitive sessions held usually from 9:30 a.m. to 2:00 p.m. Said the Court (246 U.S. at 241):

Every board of trade and nearly every trade organization imposes some restraint upon the conduct of business by its members. Those relating to the hours in which business may be done are common; and they make a special appeal where, as here, they tend to shorten the working day, or, at least, limit the period of most exacting activity.

This conclusion has vivid relevance in sustaining the marketing provision in this case. The limitation of marketing hours from 9:00 a.m. to 6:00 p.m. in the sale of fresh meat relates precisely "to the hours in which business may be done"; it has the very characteristic which imbues it with "special appeal"; for its very purpose is "to shorten the working day, or at least, limit the period of most exacting activity." It exists now, as it has for 44 years, to fulfill the wish of butchers in the Chicago area not to work at night. It "affords time for happy, normal

family life and social contacts with other families and friends." Daugherty, *Labor Problems in American Industry*, 202 (4th ed. 1938).

The good accomplished by limitation of marketing hours is not overbalanced by any harm which antitrust regulation is designed to overcome. As the District Court found (R. 676-677): (1) "There is no evidence . . . that it in any way destroyed competition among purveyors of fresh meat, created a monopoly, or adversely affected one purveyor more than another"; (2) "Nor did the evidence in any way establish that less meat is consumed in this area, in proportion to population and income, because of the restriction, than in areas where fresh meat is sold at night. In fact, the objective statistics indicated that the restriction had no discernible effect"; (3) "Furthermore, the doubtful benefits of night operations to the industry was evident from the fluctuating attitude of both the chains and independents during the course of the various contract negotiations"; (4) In addition, there is "no showing" that night "operations would result in economies or lower prices"; (5) Finally, "The only conceivable deleterious effect on the public from the restriction here is that those persons who find it more convenient to shop for meat at night are deprived of that convenience. However, the fact that some consumers would prefer longer than 54 hours during the week within which to buy fresh meat can hardly constitute the basis for holding a restriction on night hours to be an unreasonable restraint of trade."

None of this counts, according to the court below, because there is "no evidence" that the limitation "promotes competition" (*infra*, p. 8a, emphasis in original). This is a novel test. *Per se* violations aside, the governing rule is that only those restraints are invalid which are "unreasonably restrictive of competitive conditions. . . ." *Standard Oil Co. v. United States*, 221 U.S. 1, 58. A restraint which does not promote competition is not for that reason

"unreasonably restrictive." The unarticulated means by which the court below reached its contrary conclusion is by snipping a participial phrase from this Court's statement of the test in *Board of Trade*: "The true test of legality is whether the restraint imposed is such as merely regulates and *perhaps thereby promotes* competition, or whether it is such as may suppress or even destroy competition" (246 U.S. at 238, emphasis supplied). The guarded phrase "*perhaps thereby promotes competition*," stated as a possible consequence of valid regulation, is erroneously transposed by the court below into the controlling test. It is perfectly clear, however, that the difference is between valid regulation of competition, on the one hand, and illicit suppression or destruction of competition, on the other. A restraint which regulates but does not "*perhaps thereby*" promote competition does not suppress or destroy it.

The court below states that "the effects of the restriction are wholly negative and destructive of competition" (*infra*, p. 8a). But there is no basis for this statement except the court's overriding assumption that, because no trade can take place during the time that a business does not operate, a rule which brings that result about is for that reason alone competition-suppressing in the antitrust sense. But limited cessation of trade is the inherent consequence of any hours-of-trading rule. To invalidate the rule in reliance upon its intrinsic character, is to convert it into a *per se* violation which it is clearly not. "The mere fact that the parties to an agreement eliminate competition between themselves is not enough to condemn it. 'The legality of an agreement or regulation cannot be determined by so simple a test as to whether it restrains competition. Every agreement concerning trade, every regulation of trade, restrains.' *Chicago Board of Trade v. United States*, *supra* [246 U.S. 231, 238]." *Appalachian Coals Inc. v. United States*, 288 U.S. 344, 360-361.

Nor is it relevant to the validity of the marketing provision that some consumers may be inconvenienced by the

absence of night shopping. In the nature of any regulation of the hours of trade there would be some consumers who would be inconvenienced by it. But a choice in favor of not working at night, as against the wish of some consumers to shop at night, is not suppression of competition in restraint of commercial rivalry.

The court below would finally sap the relevance of *Board of Trade* by limiting it to "the problems of a specialized commodity exchange . . ." (*infra*, p. 8a). This is an odd diminution of what this Court described as a "commercial center through which most of the trading in grain is done" in "the leading grain market in the world" (246 U.S. at 235). No less queer is the ascription by the court below of lesser scope to the world grain market than to "a widespread retail marketing area" (*infra*, p. 9a). Beyond that, the surest way of missing the meaning of a case is by identifying pointless differences. *Board of Trade* stands for a tenet which transcends its immediate facts. Its continuing vitality is manifest. *White Motor Co. v. United States*, 372 U.S. 253. Its reach cannot be eluded by attempting "to shrivel" it from "a versatile principle to an illustrative application."<sup>10</sup>

The root reason for the decision below is dislike for the absence of night shopping. To that dislike the District Court gave the short and complete answer: "Although the courts are, and should be, responsive to public convenience, they cannot invoke the Sherman Act as a 'catch-all' remedy for any dissatisfactions with labor or business operations" (R. 677).

#### IV. The Question Pertaining To The Restraint Of Interstate Commerce

To be illegal within the meaning of the Sherman Antitrust Act, the alleged contract, combination, or conspiracy must be "in restraint of trade or commerce among the

<sup>10</sup> *Phelps Dodge Corp. v. N.L.R.B.*, 313 U.S. 177, 189.

*several States . . .*" (15 U.S.C. § 1, emphasis supplied). With no explanation of any kind, the court below held that an "unlawful restraint on interstate commerce" existed (*infra*, p. 9a). This holding is in irreconcilable conflict with the controlling legal standard in the light of the District Court's dispositive finding that the evidence does not "in any way establish that less meat is consumed in this area, in proportion to population and income, because of the restriction, than in areas where fresh meat is sold at night. In fact, the objective statistics indicated that the restriction had no discernible effect" (R. 676).

If there is "no restraint of interstate commerce, the conduct charged does not fall within the prohibitions of the Sherman Act." *United States v. Oregon State Medical Society*, 343 U.S. 326, 338. The Act is indifferent to a restraint "arising in the course of intrastate or local activities" if it does not have an "actual or threatened effect upon interstate commerce . . ." *Mandeville Island Farms, Inc. v. American Crystal Sugar Co.*, 334 U.S. 219, 234. Conversely, "if it is interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze." *United States v. Women's Sportswear Mfg. Ass'n*, 336 U.S. 460, 464. But it must be interstate commerce that feels the pinch. A local restraint of a product is not within the Sherman Act simply because the product had an extra-state origin.<sup>20</sup> "The test of jur-

<sup>20</sup> *Page v. Work*, 290 F. 2d 323, 330-332 (C.A. 9); *Elizabeth Hospital v. Richardson*, 269 F. 2d 167, 170 (C.A. 8), cert. denied, 361 U.S. 884; *United States v. Starlite Drive-In*, 204 F. 2d 419, 421-422 (C.A. 7); *Fedderson Motors v. Ward*, 180 F. 2d 519 (C.A. 10); *Shotkin v. General Electric Co.*, 171 F. 2d 236 (C.A. 10); *Hunt v. Crumboch*, 143 F. 2d 903 (C.A. 3), aff'd., 325 U.S. 821; *Schwing Motor Co. v. Hudson Sales Corp.*, 138 F. Supp. 899, 904-905 (D.Md.), aff'd., 239 F. 2d 176 (C.A. 4), cert. denied, 355 U.S. 823; *Brenner v. Texas Co.*, 140 F. Supp. 240, 243 (N.D. Cal.); *Northern Cal. Mon. Dealers Ass'n v. Interment Ass'n of Calif.*, 126 F. Supp. 93, 95 (D. Cal.); *Quality Limestone Products, Inc. v. Drivers Local 695*, 50 LRRM 2783, 2784 (E.D. Wis., July 19, 1962).



isdiction is not that the acts complained of affect a business engaged in interstate commerce, but that the conduct complained of affects the interstate commerce of such business." *Page v. Work*, 290 F. 2d 323, 330 (C.A. 9). And "the effect on interstate commerce of an alleged anti-trust violation in a local area must be direct and substantial, and not merely inconsequential, remote or fortuitous." *Id.* at 332.

Application of this settled standard requires the conclusion that the limitation upon market operating hours is outside the purview of the Sherman Act. Respondent buys out-of-state the carcass of heifers of 600-pound weight; the meat arrives at the meat department of the food stores "basically in sides of beef, which is a half of an animal, or in the forequarter, or hind quarter of beef"; the butchers in the meat department cut the meat into sizes and kinds suitable for retail trade (R. 160, 162-163). The critical question which exists is, not whether the carcass has an extra-state origin, but how is its interstate inflow into the Chicago area market "adversely affected."<sup>21</sup> by the contractual limitation upon retail marketing hours. The retail sale of meat over a counter is purely local intrastate activity.<sup>22</sup> The restraint, if any, must operate, if at all, at that retail level of distribution. The specific question, therefore, is whether the 9:00 a.m. to 6:00 p.m. limitation upon retail marketing hours in the sale of fresh meat diminishes the interstate inflow of meat into the Chicago area market. It is upon this vital element that the District

<sup>21</sup> *United States v. Oregon State Medical Society*, 343 U.S. 326, 338.

<sup>22</sup> *Hotel Phillips v. Journeymen Barbers*, 301 F.2d 443 (C.A. 8) (barber shops); *Page v. Work*, 290 F. 2d 323 (C.A. 9) (legal advertisement in newspapers); *Elizabeth Hospital v. Richardson*, 269 F. 2d 167 (C.A. 8), cert. denied, 361 U.S. 884 (hospital); *United States v. Yellow Cab Co.*, 332 U.S. 218 (city taxi service); *Spencer v. Sun Oil Co.*, 94 F. Supp. 408, 411 (D. Conn.) (gasoline station).

Court's undisturbed finding is dispositive. It found that there is no evidence that "less meat is consumed in this area," but that, on the contrary, the "objective statistics indicated that the restriction had no discernible effect" (R. 676). The holding of the court below is therefore in conflict with the controlling legal standard that a restraint of "general local service, without more, is not proscribed by the Sherman Act." *United States v. Yellow Cab Co.*, 332 U.S. 218, 233.

#### V. The Question Pertaining To Injury To Business Or Property

In view of its determination that "there is no violation of the Sherman Act," the District Court explicitly withheld decision of the question whether respondent "sustained any injury to its business" (R. 678). The Court of Appeals concluded, on the other hand, that "By detailed and persuasive evidence plaintiff has shown that . . . it has been injured in its business and property" (*infra*, p. 9a). This bare statement was the sole extent of its explication of this conclusion.

1. Rule 52(a) of the Federal Rules of Civil Procedure provides in part that, "In all actions tried upon the facts without a jury . . . , the [district] court shall find the facts specially and state separately its conclusions of law. . . . Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of witnesses." The fact-finding function is thus reposed in the trial judge. He alone has seen and heard the witnesses and lived with the case. Because of the superior insight which this stance gives him his findings are conclusive unless "clearly erroneous." This finality extends to all elements of the fact equation, whether weight, inference, or credibility.<sup>23</sup>

<sup>23</sup> *Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 339 U.S. 605, 609-610; *United States v. Yellow Cab Co.*, 338 U.S. 338, 341-342; *United States v. United States Gypsum Co.*, 333 U.S. 364, 394; *Walling v. General Industries Co.*, 330 U.S. 545, 550; *Anderson v. Clemens Pottery Co.*, 328 U.S. 680, 689.

including "factual inferences from undisputed basic facts. . . ." <sup>24</sup> Where, as here, the disposition of the case adopted by the District Court does not require it to reach a further question entailing findings of fact for its resolution and the District Court therefore withholds decision, the only rightful course upon the part of the Court of Appeals upon reversal of that disposition is to remand for determination of the reserved question. Otherwise the Court of Appeals must itself assume the role of *de novo* fact-finder in derogation of the function of the District Court. To bypass the District Court deprives the litigant of the benefit of findings infused with the insight of the trial judge's personal observation and armored against reversal unless clearly erroneous.

2. While erroneously substituting itself as the finder-of-fact, the Court of Appeals failed to discharge an essential aspect of that function by omitting to "find the facts specially. . . ." Just the other day this Court censured fact-finding which was not the product of the working of the trial judge's mind, but was the mechanical adoption of the prevailing counsel's proposed findings, because such findings "do not reveal the discerning line for decision of the basic issue in the case." <sup>25</sup> *A fortiori* is this true when there are no findings of fact at all. Findings are not only important "for the convenience of the upper courts," as the means of apprising them of just what the basis of decision is, but also "of evoking care on the part of the trial judge in ascertaining the facts. For, as every judge knows, to set down in precise words the facts as he finds them is the best way to avoid carelessness in the discharge of that duty: Often a strong impression that, on the basis of the evidence, the facts are thus-and-so gives way when

<sup>24</sup> *C.I.R. v. Duberstein*, 363 U.S. 278, 291.

<sup>25</sup> *United States v. El Paso Natural Gas Co.*, 376 U.S. 651, 656-657.

it comes to expressing that impression on paper.<sup>26</sup> That discipline is required of a court of appeals as well. When a court of appeals does have proper occasion to act as fact-finder it is therefore obligated to state its findings. *Times Mirror Co. v. N.L.R.B.*, 331 U.S. 789. Failure to do so requires vacation of the judgment and a remand "with directions to make findings of fact." *Ibid.*

3. Decision in the first instance of the question of injury by the Court of Appeals in this case strikingly reveals the indispensability of initial fact-finding by the District Court and, if indeed the Court of Appeals is to act as *de novo* fact-finder, the making of findings by it. As described by the District Court, "To establish damages resulting from the limitation on marketing hours, plaintiff introduced a study made by one of its employee accountants of differences in 9 store earnings the year before and the year after night meat operations were authorized. The study purported to show that the increase in earnings was due to the evening marketing hours for meat" (R. 668-669). While withholding final decision, the District Court expressed total skepticism concerning the validity of the study. It stated that: "The study, made by an employee who had only a single half-semester course in statistics, failed to take account of certain economic variables affecting sales and profits; the study erroneously included one store in which no change in hours occurred; a decrease in sales and earnings occurred in two stores; and the increase in earnings in another store was identical with the average increase in earnings for the same period in which there were no night operations" (R. 669).

Exploration of but one of the deficiencies noted by the District Court discloses the total untenability of the study. The District Court pointed out that the study "failed to take account of certain economic variables affecting sales

<sup>26</sup> Judge Jerome Frank, in *United States v. Forness*, 125 F. 2d 928, 942 (C.A. 2), cert. denied, 316 U.S. 694.

and profits" (R. 669). Respondent admits that the profitability of any store is a complex of many factors (R. 204-208, 211, 216, 221, 279, Tr. 297). It admits that, if night marketing hours is a factor in profitability at all, it is only one of numerous factors (R. 279-280, 205, 207, 215, 216, Tr. 416). And it admits that included among the "many, many underlying factors" entering into the profitability of a store are the locale of the store, its size, the caliber of the manager and personnel, general efficiency, population in the community, competition, advertising promotions, and plain chance (R. 208, 279). When asked how he could isolate from this complex of intangible variables the influence, if any, that an increase in night marketing hours could have, the maker of the study explained that (R. 218):

Even though, in some of the before and after situations, you see, there appeared to be even no change, I would say that by the same token that those figures have not been excluded because they do not prove the point, and just because some other figures over-prove the point, I think that is some of the factors that make up any average of specifics because you have your highs and your lows, and that is all I can tell you.

And he further explained that (R. 279):

In my judgment that if you were to take nine stores and compare them in the one year previous to a change and the one year after a change, that if you were to compare various indicatives which made up their operating performance, and that if you were to then average their performance, that the underlying net effect would show you the effect of what this one underlying factor is in most part.

The study is as senseless as the explanation.

The fallacy of the study is further shown by a much more meaningful comparison which respondent failed to make. Its thesis is that night operation of meat departments increases sales and earnings. If this is true, a com-



parison of stores which sell fresh meat after 6:00 p.m. with stores which do not sell fresh meat after 6:00 p.m. should show that the store with night operations sells more and earns more. Again on respondent's theory, any other variables which might influence the result cancel out since they would manifest themselves indiscriminately in both classes of stores, leaving only market operating hours as the determinative difference. Yet such a comparison, for the years 1958 to 1961, shows that the stores vending fresh meat after 6:00 p.m. sell about the same or less, not more, and earn much less, not more (*infra*, pp. 36a-39a). It is plainly impossible to argue validly that stores which already earn more money would earn still more money if they operated like stores which earn less money.

No one reading the opinion of the Court of Appeals can have the least idea of how it arrived at its conclusion that injury was nevertheless shown or how it accounted for the factors disproving its existence. A private antitrust suit cannot be maintained in the absence of injury caused by the violation. Injury must be "the certain result of the wrong," "definitely attributable to it." *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U.S. 555, 562. "Certainty in the fact of damage is essential." *Palmer v. Connecticut P. & L. Co.*, 311 U.S. 544, 561. But rules of law control nothing, a record counts for nothing, and fact-finding is wholly undisciplined if all that a court needs to do to explain its result is to say that the evidence is "detailed and persuasive . . ." (*infra*, p. 9a).<sup>27</sup>

#### VI. The Question Pertaining To The In Pari Delicto Defense

The District Court also explicitly withheld decision of the question whether respondent "was in *pari-delicto* with the defendant unions" (R. 678). But the Court of Appeals concluded that "the defense of *in pari delicto* is not avail-

<sup>27</sup> This objection obtains as well to the conclusion of the court below that interstate commerce is restrained (*supra*, pp. 37-40) and that respondent is not in *pari delicto* (*infra*, pp. 44-45).

able here" (*infra*, p. 10a). The only circumstance supporting this conclusion is that "Local 546, by secret ballot, authorized a strike if necessary to avoid night operations, by a vote of 2,253 in favor to 98 against" (R. 666).

But there is a long distance between strike authorization and a strike (*Brown Transport Corp.*, 140 NLRB 954, 957), and respondent never essayed any part of the distance. It has without deviation entered into agreements containing the limitation upon market operating hours since it began operating meat departments in the Chicago area in 1933 (R. 633). It entered into the 1957 negotiations with a full and unbroken history of participation in the limitation. In 1957, it would have been perfectly content with a modification that would have permitted one night of operation on Friday, leaving the limitation otherwise totally intact (R. 666). But even total retention of the limitation would have been satisfactory to it. Thus, at the close of the 1957 negotiations respondent offered to give up its demand for night operations if the unions would agree to female wrappers (R. 666), a proposal to have women package meat at a wage rate less than is received by an apprentice meat cutter (R. 356-357). When respondent bargained for one night of operation, and was willing to settle for none at all in exchange for female wrappers, it was *in pari delicto*.

**CONCLUSION**

For the reasons stated this petition for a writ of certiorari should be granted, and the case should be set down for argument in conjunction with *United Mine Workers v. Pennington*, No. 927, October Term 1963.

Respectfully submitted,

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July 1964

**APPENDIX A**

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

Chicago 10, Illinois

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Monday, April 27, 1964

Before

HON. JOHN S. HASTINGS, *Chief Judge*

HON. F. RYAN DUFFY, *Circuit Judge*

HON. ELMER J. SCHNACKENBERG, *Circuit Judge*.

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No. 14119

JEWEL TEA COMPANY, INC., a New York corporation,  
*Plaintiff-Appellant,*

v.

ASSOCIATED FOOD RETAILERS OF GREATER CHICAGO, INC, an  
Illinois corporation, and CHARLES H. BROMANN,  
*Defendants-Appellees.*

No. 14196

JEWEL TEA COMPANY, INC., a New York corporation,  
*Plaintiff-Appellant,*

v.

LOCAL UNIONS NOS. 189, 262, 320, 546, 547, 571 and 638,  
AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN  
OF NORTH AMERICA, AFL-CIO, ET AL.,  
*Defendants-Appellees.*

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Appeals from the United States District Court for the  
Northern District of Illinois, Eastern Division

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This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court dismissing the case as to defendants Associated Food Retailers of Greater Chicago, Inc. and Charles H. Bromann, and the judgment of that Court dismissing the case as to all other defendants therein be, and the same is hereby, REVERSED, with costs. It is further ordered that case No. 14119 be, and the same is hereby REMANDED to the said District Court for such further proceedings as may be consistent with the opinion of this Court filed this day; and that case No. 14196 be, and the same is hereby REMANDED to the said District Court with direction to enter a declaratory judgment and an injunction substantially as prayed in the complaint herein and to ascertain and award to plaintiff such monetary relief as may be appropriate under the opinion of this Court filed this day.



## APPENDIX B

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

Nos. 14119, 14196

SEPTEMBER TERM, 1963

APRIL SESSION, 1964

No. 14119

JEWEL TEA COMPANY, INC., a New York corporation,  
*Plaintiff-Appellant,*

v.

ASSOCIATED FOOD RETAILERS OF GREATER CHICAGO, INC, an  
Illinois corporation, and CHARLES H. BROMANN,  
*Defendants-Appellees.*

No. 14196

JEWEL TEA COMPANY, INC., a New York corporation,  
*Plaintiff-Appellant,*

v.

LOCAL UNIONS NOS. 189, 262, 320, 546, 547, 571 and 638,  
AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN  
OF NORTH AMERICA, AFL-CIO, ET AL.,  
*Defendants-Appellees.*

Appeals from the United States District Court for the  
Northern District of Illinois, Eastern Division

April 27, 1964

Before HASTINGS, *Chief Judge*, and DUFFY and SCHNACK-  
ENBERG, *Circuit Judges.*

SCHNACKENBERG, *Circuit Judge.* Jewel Tea Company,  
Inc., a New York corporation, plaintiff, has appealed from

judgments entered by the district court, after our remand in case No. 12653.<sup>1</sup>

This action is for a declaratory judgment and seeks relief under the Sherman Act. 15 U.S.C.A. §§ 1 and 2.

At a trial, the district court dismissed defendants Associated Food Retailers of Greater Chicago, Inc., an Illinois corporation; and Charles H. Bromann, its secretary, at the close of plaintiff's case,<sup>2</sup> which action is attacked in No. 14119, and dismissed the complaint as to the defendants Local Unions Nos. 189, 262, 320, 546, 547, 571 and 638 of Amalgamated Meat Cutters and Butcher Workmen of North America AFL-CIO and certain officers and representatives of the unions as named in our opinion in case No. 12653, at the close of all the evidence,<sup>3</sup> which action is attacked in No. 14196. The appeals have been consolidated here.—

Plaintiff contends that the district court erroneously failed to follow the law of the case and the principles of antitrust law, and disregarded the arbitrary and unreasonable nature of the restraint (imposed by defendants on plaintiff's business) and the magnitude of its effect on trade. Defendants urge that plaintiff failed to prove a conspiracy, and that union activity to attain market operating hours is a reasonable regulation of trade not within the prohibition of the Sherman Act, and does not restrain interstate commerce. Also, they argue that plaintiff failed to prove injury to its business or property and that it is *in pari delicto*.

In our prior opinion, at 221, we said:

"Facts set forth in the complaint show a 'wide-spread public demand in the Chicago area that meat

<sup>1</sup> 274 F. 2d 217 (1960); cert. den., 362 U.S. 936.

<sup>2</sup> 215 F. Supp. 837.

<sup>3</sup> *Ibid.* 839.

be available for retail purchase at Jewel stores during one or more evenings of the week.' Plaintiff has an untrammelled right to determine its course of action in respect to this matter.

"Whether one system of marketing or another offers the greater good and better prices in any given community is to be determined by the public: the laws of free competition may not be thwarted by a combination of employers and unions who conspire to prevent commercial development."

The evidence admitted by the district court on remand is in the record now before us. It sustains the material allegations of the complaint. There are no factual disputes revealed by the evidence. No question as to the credibility of any witnesses on any issue which we consider relevant, has been raised. Therefore, our holding of the law on the facts as stated in the complaint we now adopt as our holding of the law as applied to the evidence upon remand. Especially do we reaffirm our rejection of defendants' contention that an agreement pertaining to market operating hours is exempt from the antitrust laws since it was entered into in the self-interest of the employees to attain or maintain conditions deemed by the union relevant to the employees' working welfare. Significantly, we then quoted from *Allen Bradley Co. v. Local Union No. 3, IBEW*, 325 U. S. 797 (1945), where the exemption was qualified, the court stating at 808-810:

" \* \* \* Congress never intended that unions could, consistently with the Sherman Act, aid non-labor groups to create business monopolies and to control the marketing of goods and services.

"Our holding means that the same labor union activities may or may not be in violation of the Sherman Act, dependent upon whether the union acts alone

or in combination with business groups. \* \* \* " (Emphasis supplied.)

The district court sought to support its decision by citing the fact that, as a result of collective bargaining between the meat butchers and the retailers in 1920, they entered into an agreement which covered many questions in dispute, including a limitation on marketing hours. The court points out that when plaintiff came into the Chicago area in 1933, it entered into similar agreements with defendant unions. Such agreements did follow in succession until 1957 when plaintiff raised and insisted upon the position it takes in this case. Plaintiff in 1957, 1959 and 1961 sought an agreement on evening operations. It was unsuccessful.

The district court states as its principal finding that the "restriction [against evening hours] was imposed after arm's length bargaining, \* \* \* These are not objects which the anti-trust laws proscribe. They are conditions of employment, and as such are clearly within the labor exemption of the Sherman Act. \* \* \* " We cannot agree. To make a business succeed, thereby furnishing employment to persons engaged in its operation, the responsibility rests upon the employer to determine where the business will be located, his acquisition of necessary buildings and fixtures, the installation of the business and its subsequent maintenance, his establishment of credit with suppliers of commodities and the various other responsibilities resting upon a proprietor. One of the proprietary functions is the determination of what days a week and what hours of the day the business will be open to supply its customers. Among the decisions which the proprietor must make and upon which his success and the livelihood of his employees depend is how to attract customers, which must be accomplished by the quality of merchandise offered at such

times as shall be convenient to the public.<sup>4</sup> It follows clearly that whether fresh meats are to be sold after 6 P.M. depends upon the convenience and requirements of the people living within shopping distance of the place of business. The hours of the day when his business is to be open to accommodate the demands of customers, in the judgment of the owner of the business, is not a condition of employment, contrary to the district court's finding. As long as all rights of employees are recognized and duly observed by the employer, including the number of hours per day that any one shall be required to work, any agreement by a labor union, acting in concert with business competitors of the employer, designed to interfere with his operation of a retail business, engaged in handling products in the course of interstate commerce, is a violation of the Sherman Act, and not entitled to the exemption therefrom claimed by the defendant unions in this case.

The district court overlooks the fact that whether the butchers have jobs at all depends on whether they will serve the demands of the public. It also overlooks that the furnishing of a place and advantageous hours of employment for the butchers to supply meat to customers are the prerogatives of the employer. As we said (274 F. 2d at 221):

" \* \* \* An employer has the right and it is his duty, if he is to survive commercially, first to determine the needs of the public, second to provide a time, a place and facilities for meeting those needs, and third to provide, under the terms of the National Labor Relations Act, the services of employees to accomplish the

<sup>4</sup> The district court summarily disposed of the effect on the public of evening shopping for fresh meat, by saying:

"The only conceivable deleterious effect on the public from the restriction here is that those persons who find it more convenient to shop for meat at night are deprived of that convenience. \* \* \*"



foregoing objectives. The rights of labor attach only to the *third*, and if any effort is made by labor to infringe rights of the employer in the first or second field, it is not shielded from the sword of the anti-trust laws. Determining the needs of the public and meeting those needs are inherent proprietary rights and obligations of the employer and must be clearly distinguished from his rights and duties as master in the master and servant relationship. Setting marketing hours is one such proprietary function which an employer has the exclusive right to determine as dictated by economic factors present within his trading area." (Italics supplied.)

Defendants would apply to their purpose *Board of Trade v. United States*, 246 U. S. 231 (1918). In that case, the court found that a rule of the Chicago Board of Trade had only a slight effect as a restriction upon free competition in the pricing of grain and, at 240, said that it "created" a public market for grain 'to arrive'. It pointed out that it provided an improvement in actual market conditions in several specific ways and thus was promotive of competition rather than destructive thereof in its actual effect.

There is *no* evidence in *this* record showing that the net effect of the market hours restraint promotes competition. The opinion of the district court is devoid of *any* finding to that effect. On the contrary, the record shows that the effects of the restriction are wholly negative and destructive of competition. Even the district court expressly found that the restriction "obviously restrained a small segment of competition". We believe that the market hours restriction cannot come within the rule of reason announced in *Chicago Board of Trade v. United States*, *supra*. Moreover, a case concerned with the problems of a specialized commodity exchange and a rule thereof which was affirmatively found to have *promoted* competition is scarcely authority for upholding a restraint which seriously suppresses

and interferes with competitive forces in a widespread retail marketing area. The district court's reliance on *Chicago Board of Trade* was, therefore, not justified.

In the case at bar, during oral argument, we were surprised by unions' counsel, who, while emotionally maintaining that union butchers should be given an opportunity to be with their children on Friday evenings, spurned a suggestion that other fathers in Chicago and its suburbs might desire to be at home with *their* children, while their wives took the family car to do their meat shopping on that evening. But defendants' counsel was positive that, in considering the application of the antitrust laws, the convenience and welfare of the public are irrelevant.

The evidence on remand supports the allegations of the complaint charging that the unions and the Associated Food Retailers of Greater Chicago, Inc., defendants, effectuated through a contract, an unreasonable restraint of trade. By detailed and persuasive evidence plaintiff has shown that, as a result, it has been injured in its business and property. The fact of defendants' unlawful restraint on interstate commerce is supported by convincing evidence.

As to the assertion that plaintiff is *in pari delicto*, we decided on the prior appeal, 274 F. 2d 217, 223:

"Appellants next assert that plaintiff is without standing to sue because, as a party to the alleged illegal agreement it is *in pari delicto*. Appellants concede however, that the *in pari delicto* defense does not apply where plaintiff's participation in the wrong alleged was induced by economic necessity, or where plaintiff's wrongful act is divorced from the illegal conspiracy, agreement or combination alleged in the complaint.

" \* \* \* When a business organization is the victim of an *illegal conspiracy* between certain of its competitors and a labor union to restrain trade, the business organ-

ization is not required to fight the matter out by economic warfare thus subjecting its employees who are not members of the offending union, its customers, and its stockholders, to the losses, inconvenience and damages of a strike, all for the purpose of shielding itself from the *in pari delicto* stigma.

"In view of the factual situation which confronted plaintiff, the defense of *in pari delicto* is not available here. . . ."

We adhere to those views:

Plaintiff's complaint charged that defendants engaged in an unlawful combination and conspiracy to suppress competition among retail meat markets in the Chicago area and to prevent the sale of meat before 9 A.M. or after 6 P.M. Mondays through Saturdays.

In view of the facts in this case as shown by the evidence, it is clear that plaintiff proved that the unions, Associated Food Retailers and Bromann, its secretary, entered into a combination or agreement, which constituted a conspiracy, as charged in the complaint. It was therefore illegal and void because violative of the Sherman Act. *Allen Bradley Co. v. Local Union No. 3, supra*; cf. *United States v. Hutcheson*, 312 U. S. 219, 232 (1941).

In *Interstate Circuit, Inc. v. United States*, 306 U. S. 208, 227 (1939), the court said:

" . . . Acceptance by competitors, without previous agreement, of an invitation to participate in a plan, the necessary consequence of which, if carried out, is restraint of interstate commerce, is sufficient to establish an unlawful conspiracy under the Sherman Act. . . ."

In *Brotherhood of Carpenters v. United States*, 330 U. S. 395 (1947), the court used the words "conspiracy" and "contract" interchangeably.

The district court in the case at bar found that "From 1957 Plaintiff sought exclusion of the restriction on night sales from the industry-wide contract, and the Defendant Local Unions resisted such exclusion. *The rest of the Industry agreed with the Defendant Local Unions to continue the ban on night operations.*" (Italics supplied.)

The agreement between the unions and Associated Food Retailers is still operative as shown by their common defense in this case.<sup>5</sup> Whether it be called an agreement, a contract or a conspiracy, is immaterial.

For the reasons above stated, we reverse the judgment of the district court dismissing the case as to defendants Associated Food Retailers of Greater Chicago, Inc. and Charles H. Bromann, and the judgment of that court dismissing the case as to all other defendants therein, and we direct, in case No. 14119, that said case be remanded to the district court for such further proceedings as may be consistent with this opinion; and in case No. 14196 we direct that said case be remanded to the district court to enter a declaratory judgment and an injunction substantially as prayed in the complaint herein and to ascertain and award to plaintiff such monetary relief as may be appropriate under this court's opinion.

REVERSED AND REMANDED  
WITH DIRECTIONS.

A true Copy:

Teste:

.....  
*Clerk of the United States Court of  
Appeals for the Seventh Circuit.*

<sup>5</sup> We granted Associated's motion that the Union's brief stand as the brief of Associated and Bromann, its secretary.

Likewise, in our prior opinion, 274 F. 2d 217, 222, note 4, we said:

"Associated and Bromann have entrusted their interests in the defense of this suit to counsel for the unions. They formally adopted by reference the latter's motions and briefs."

## APPENDIX C

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

No. 12653 SEPTEMBER TERM, 1959—JANUARY SESSION, 1960  
JEWEL TEA COMPANY, INC., a New York corporation,  
*Plaintiff-Appellant,*

v.

LOCAL UNIONS NOS. 189, 262, 320, 546, 547, 571 and 638,  
AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN  
OF NORTH AMERICA, AFL-CIO, ET AL.,  
*Defendants-Appellees.*

Appeal from the United States District Court for the  
Northern District of Illinois, Eastern Division

January 11, 1960

Before DUFFY and SCHNACKENBERG, *Circuit Judges*, and  
PLATT, *District Judge*.

SCHNACKENBERG, *Circuit Judge*. Appellee, plaintiff below, is Jewel Tea Company, Inc. (herein called Jewel), a New York corporation operating 196 retail stores in and around the Chicago area, including four stores in northwestern Indiana. Defendants, Local Unions Nos. 189, 262, 320, 546, 547, 571 and 638 of Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO (herein sometimes referred to as unions), Earl Salton, Frank Fox, Earl Heinz, Harold L. Rosa, George Flosi, Lester Ferguson, Fred Clayco, Alex M. Neildowski, Thomas F. Gorman, R. Emmett Kelly, Mark Cantrell, Casimir Walezak, Stanley Brodzinski and William A. Stepan, officers and representatives of said unions, appeal from orders denying, and adhering to the denial, a motion to dismiss Jewel's complaint alleging a violation of §§ 1 and 2 of the Sherman Antitrust Act.<sup>1</sup> The court



below entered an order authorizing an immediate appeal.<sup>2</sup> Also named as defendants, but not parties to the appeal, are Associated Food Retailers of Greater Chicago, Inc., an Illinois corporation (herein referred to as Associated), a not-for-profit trade association representing several thousand individual or independent food stores engaged in the retail sale of meat in the Greater Chicago area, and Charles H. Bromann, secretary and treasurer of Associated.

The complaint alleges that there are approximately 9,000 retail food stores in the Chicago area which sell meats, fish and poultry; their annual sales of such products exceed \$5,000,000,000. Substantial portions of the meats and allied products so sold are acquired from without Illinois or acquired from suppliers in Illinois who have purchased said meats from out-of-state sources for resale to meat distributors, wholesalers and retail food stores in the Chicago area. Approximately 77.5% of such products retailed by plaintiff originate outside Illinois. Plaintiff's sales of meats, poultry, fish and similar items customarily sold in meat markets were approximately \$85,000,000 in 1957.

Final preparation of the meats for sale to the public is generally performed by the retail meat markets themselves which employ and supervise members of defendant unions who perform this work. Jewel has introduced a "pre-packaged, self-service" system in approximately 174 of its stores, whereby the meat is cut, trimmed and wrapped in sanitary, transparent, cellophane packages in advance of sale. Under this system customers are able to purchase meat without waiting for services of a butcher, and butchers are able to prepare the meats without customer interruptions. Because of modern refrigeration equipment installed by plaintiff, prepackaged meats can

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<sup>2</sup> 28 U.S.C.A. § 1292 (b).

be sold during evening hours without a butcher in attendance.

The complaint further alleges that in the Chicago area there is a widespread demand that meat be available for retail purchase one or more evenings a week since in many households both husband and wife work during daytime hours or the family automobile is available for marketing only in the evening. Plaintiff would so provide convenient evening hours for sale of its meats except for an alleged conspiracy, which is the subject matter of this suit.

It is alleged that beginning ten years ago and continuing thenceforth, defendants have engaged in an unlawful combination and conspiracy to suppress competition among retail meat markets in the Chicago area and wholly to prevent the sale of meats and meat products before 9 A.M. or after 6 P.M. Mondays through Saturdays. In furtherance of this alleged combination or conspiracy, the defendants entered into an agreement, the substantial terms of which, according to the complaint, are that they agreed

“(a) That no person or firm be permitted to engage in the retail sale of fresh beef, veal, lamb, mutton, or pork before 9:00 A.M. or after 6:00 P.M.

“(b) That defendant locals and their officials and representatives named herein refuse to allow members of their organization to sell fresh beef, veal, lamb, mutton or pork at retail before 9:00 A.M. or after 6:00 P.M.

“(c) That no person or firm be permitted to sell fresh beef, veal, lamb, mutton or pork at retail before 9 A.M. or after 6:00 P.M. with or without the employment of members of defendant unions outside those hours.

“(d) The co-conspirator members of defendant Associated have agreed among themselves to insist that

all collective bargaining agreements entered into between them and defendant unions or between defendant unions and plaintiff or other operators of food stores shall contain provisions prohibiting the sale at retail of fresh beef, veal, lamb, mutton or pork before 9:00 A.M. and after 6:00 P.M.

(e) Associated, its members and officers have conspired and agreed with the other defendants that neither plaintiff nor any other merchandiser is to be permitted to compete lawfully with them by operating self-service meat markets between the hours of 6:00 P.M. and 9:00 P.M.

(f) That defendant unions, their officers and members have acted as the enforcing agent of the conspiracy."

Under compulsion of the alleged conspiracy and the threat of strike by the unions, plaintiff asserts that it was forced to sign in late January and early February 1958 contracts with defendant unions containing the following restriction:

"Market operating hours shall be 9:00 a.m. to 6:00 p.m. Monday through Saturday, inclusive. No customer shall be served who comes into the market before or after the hours set forth above."

The remaining provisions of the collective bargaining contracts concern hours, wages and conditions of employment.

<sup>a</sup> This provision appears in each of two different collective bargaining agreements, one known as a "Service Contract" and applicable to "Service Meat Markets," the other known as a "Self-Service Contract" and applicable to "Self-Service Meat Markets." Each agreement effective October 6, 1957, runs until October 3, 1959, and from year to year thereafter, unless terminated by written notice given not less than 60 days prior to each expiration date.

1. The core of appellants' position in their motion to dismiss is that "the provisions pertaining to market operating hours and the basic work day are opposite sides of the same coin," since, as they assert, a change in one automatically affects the other. And because one side of this coin, hours of employment, is governed by the National Labor Relations Act, *ipso facto* the reverse side is also within the exclusive, regulatory scope of that act. Not only is the conclusion fallacious, but also the basic premise from which it is derived. An employer has the right and it is his duty, if he is to survive commercially, first to determine the needs of the public, second to provide a time, a place and facilities for meeting those needs, and third to provide, under the terms of the National Labor Relations Act, the services of employees to accomplish the foregoing objectives. The rights of labor attach only to the third, and if any effort is made by labor to infringe rights of the employer in the first or second field, it is not shielded from the sword of the antitrust laws. Determining the needs of the public and meeting those needs are inherent proprietary rights and obligations of the employer and must be clearly distinguished from his rights and duties as master in the master and servant relationship. Setting marketing hours is one such proprietary function which an employer has the exclusive right to determine as dictated by economic factors present within his trading area.

Facts set forth in the complaint show a "widespread public demand in the Chicago area that meat be available for retail purchase at Jewel stores during one or more evenings of the week." Plaintiff has an untrammelled right to determine its course of action in respect to this matter.

Whether one system of marketing or another offers the greater good and better prices in any given community is to be determined by the public; the laws of free competition may not be thwarted by a combination of

employers and unions who conspire to prevent commercial development.

Appellants rely on *Teamsters Union v. Oliver*, 358 U.S. 283 (1959), to sustain their argument that market operating hours are so intimately connected with hours of employment that the two cannot be divorced. In that case several local unions entered into a collective bargaining agreement with a group of interstate motor carriers providing for regulation of rental fees and wages paid to owner-drivers of vehicles leased to the carriers. The court held that the leasing of these vehicles was a matter of collective bargaining, but carefully qualified this holding by stating, at 293:

The text of the Article [agreement] and its unchallenged history show that its objective is to protect the negotiated wage scale against the possible undermining through diminution of the owner's wages for driving which might result from a rental which did not cover his operating costs. This is thus but an instance, as this Court said of a somewhat similar union demand in another case, in which a union seeks to protect lawful employee interests against what is believed, rightly or wrongly, to be a "scheme or device utilized for the purpose of escaping the payment of union wages and the assumption of working conditions commensurate with those imposed under union standards." *Milk Wagon Drivers' Union v. Lake Valley Farm Products, Inc.*, 311 U.S. 91, 98-99 \* \* \*. The regulations embody not the "remote and indirect approach to the subject of wages" \* \* \* but a direct frontal attack upon a problem thought to threaten the maintenance of the basic wage structure established by the collective bargaining contract.

Although exercise of an employer's proprietary right to establish marketing hours may incidentally affect its employees, as will almost anything it does, it can hardly



be argued that such action is a "direct frontal attack" upon or even a "remote and indirect approach" to the subject of the basic work day. It is conceivable that maintenance of meat markets during evening hours will create even more jobs for union employees.

2. Appellants next assert that an agreement pertaining to market operating hours is exempt from the anti-trust laws since it was entered into in the self-interest of the employees to attain or maintain conditions deemed by the union relevant to the employees' working welfare. *United States v. Hutcheson*, 312 U.S. 219 (1941). However, appellants recognize that *Allen Bradley Co. v. Local Union No. 3, IBEW*, 325 U.S. 797 (1945), qualifies this exemption. The Supreme Court there stated, at 808-810:

\*\*\* Congress never intended that unions could, consistently with the Sherman Act, aid non-labor groups to create business monopolies and to control the marketing of goods and services.

Our holding means that the same labor union activities may or may not be in violation of the Sherman Act, dependent upon whether the union acts alone or in combination with business groups. (Emphasis supplied.)

The complaint states that defendant Associated is a trade association consisting of "several thousand individual or independent food stores engaged in the retail sale of meat for human consumption in the Greater Chicago area." The complaint further states that for many years past defendant Associated and its co-conspirator members and Bromann and the defendant unions, their officers and members, have insisted, despite public demand and interest to the contrary, that contracts between defendant unions and all operators of retail meat markets contain provisions prohibiting the retail sale of

meat after 6 P.M. and have exercised the unions' monopoly powers to effectuate that insistence.

The operation of this agreement has enabled Associated stores to remain closed after 6 P.M. without fear of losing trade to plaintiff, a major competitor, because of evening sales, and also to avoid the added expense of remaining open during the evening. Any attempt to clothe the alleged conspiracy with a robe of propriety by making the union a co-conspirator is to make the latter a vehicle for exempting an otherwise unlawful activity from the sweep of the Sherman Act. This the antitrust laws will not condone.<sup>4</sup>

3. To establish a violation of the Sherman Act the alleged contract, combination or conspiracy must be "in restraint of trade or commerce *among the several States* . . . ." (15 U.S.C.A. § 1, emphasis supplied.) Appellants admit that the complaint sufficiently alleges the interstate flow of meats into the Chicago market, but assert that failure to allege diminution of this inflow is fatal to plaintiff's cause of action, since the retail trade of meats over the counter is purely a "local intrastate activity" which cannot in and of itself adversely affect interstate commerce. The complaint avers that the effects of the alleged unlawful agreement to limit marketing hours to 9 A.M. to 6 P.M. has been to restrain the flow of interstate trade and commerce of meats and meat products, and to maintain the price of retail meats above what they would otherwise be. In accordance with *United States v. Employing Plasters Ass'n.*, 347 U.S. 186, 189 (1954), we hold that the complaint properly charges a restraint of interstate commerce, and that plaintiff should be given an opportunity to introduce evidence to prove that these local restraints unreasonably burden the free and unin-

<sup>4</sup> Associated and Bromann have entrusted their interests in the defense of this suit to counsel for the unions. They formally adopted by reference the latter's motions and briefs.

interrupted flow of meats into the Chicago market. "That wholly local business restraints can produce the effects condemned by the Sherman Act is no longer open to question." *Ibid.* See also *United States v. Employing Lathers Ass'n.*, 347 U.S. 198 (1954); *Local 167 v. United States*, 291 U.S. 293, (1934); *Sandidge v. Rogers*, 256 F. 2d 269, 276 (7th Cir. 1958).

4. Appellants urge that the agreements in question to set market hours come within "the rule of reason", and are therefore not an unreasonable restraint of trade. *United States v. American Tobacco Co.*, 221 U.S. 106, 179 (1911). It is clear that a mere agreement to eliminate competition is not enough to condemn it, unless a *per se* violation. *Northern Pac. Ry. Co. v. United States*, 356 U.S. 1, 5 (1958); *Klor's v. Broadway-Hale Stores*, 359 U.S. 207, 212 (1959). A close and objective scrutiny of particular conditions and purposes is necessary in each case. *Appalachian Coals, Inc. v. United States*, 288 U.S. 344, 360 (1933). Therefore, such a determination cannot be disposed of on a motion to dismiss, but must be properly aired in a trial where both parties have an opportunity to offer evidence as to facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual and probable; and the history of the restraint, i.e., the evil believed to exist, the reason for adopting the particular remedy, and the purpose or end sought to be attained. *Chicago Board of Trade v. United States*, 246 U.S. 231, 238 (1918). It is sufficient to permit the matter to go to trial in that the complaint alleges the unreasonableness of the restraint.

5. Appellants next assert that plaintiff is without standing to sue because, as a party to the alleged illegal agreement, it is *in pari delicto*. Appellants concede, however, that the *in pari delicto* defense does not apply where plaintiff's participation in the wrong alleged was induced by economic necessity, or where plaintiff's wrongful act is

divorced from the illegal conspiracy, agreement or combination alleged in the complaint.

Appellants rely principally on *Lewis v. Quality Coal Corp.*, 270 F.2d 140 (7th Cir. 1959), where this court held that "the threat to cause a *legal* strike and its attendant work stoppage does not of itself constitute duress." (Emphasis supplied.) *Id.* at 143. Unlike the alleged illegal agreement here, the majority opinion there held that the contract in question was legal. When a business organization is the victim of an *illegal conspiracy* between certain of its competitors and a labor union to restrain trade, the business organization is not required to fight the matter out by economic warfare thus subjecting its employees who are not members of the offending union, its customers, and its stockholders, to the losses, inconvenience and damages of a strike, all for the purpose of shielding itself from the *in pari delicto* stigma.

In view of the factual situation which confronted plaintiff, the defense of *in pari delicto* is not available here. Private suits are merely a vehicle intended to further enforce the antitrust laws for the benefit of the real party in interest, the public. In the case at bar, the *in pari delicto* defense, therefore, cannot be allowed to thwart this congressional attempt to protect the public. The Supreme Court in *Kiefer-Stewart Co. v. Seagram & Sons*, 340 U.S. 211, 214 (1951) stated:

If petitioner and others were guilty of infractions of the antitrust laws, they could be held responsible in appropriate proceedings brought against them by the Government or by injured private persons. The alleged illegal conduct of petitioner, however, could not legalize the unlawful combination by respondents nor immunize them against liability to those they injured.

6. Appellants finally urge that plaintiff has suffered no injury to its business or property since the volume of goods

purchased would remain relatively constant regardless of any change in marketing hours. However, plaintiff alleges in its complaint that the illegal conspiracy eliminates operating economies which are available to plaintiff through evening operation of its special refrigerated cases and other capital equipment, and proper utilization of labor. Thereby, the public has been denied the benefit of lower prices and plaintiff has suffered loss of profits. As this court held in *A. C. Becken Co. v. The Gemex Corp.*, 272 F. 2d 1 (7th Cir. 1959), where the fact of actual damages has been proven, mere speculation as to the amount of those damages will not defeat the plaintiff's right to recover. We hold that this complaint properly alleges facts, which, if proven, will establish the fact of actual damages.

For the reasons hereinbefore set forth the orders of the district court are affirmed and this cause is remanded for further proceedings not inconsistent with the views herein expressed.

**AFFIRMED AND REMANDED  
FOR FURTHER PROCEEDINGS:**

A true Copy:  
Teste:

**KENNETH J. CARRICK**  
*Clerk of the United States Court of  
Appeals for the Seventh Circuit.*



## APPENDIX D

## Relevant Statutory Provisions

1. *The Sherman Antitrust Act* (26 Stat. 209, as amended, 69 Stat. 282, 15 U.S.C. §§ 1, 2):

Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. . . .

Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

2. *The Clayton Act* (38 Stat. 731, 738, 15 U.S.C. § 17, 29 U.S.C. § 52):

Sec. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profits, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade under the antitrust laws.

Sec. 20. That no restraining order or injunction shall be granted by any court of the United States, or by a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and per-

sons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property, or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the facts specified in this paragraph be considered or held to be violations of any law of the United States.

3. *The Norris-La Guardia Act* (47 Stat. 70, 29 U.S.C. § 101):

Sec. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid, or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

Sec. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment.

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act.

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any

strike or unemployment benefits or insurance, or other moneys or things of value.

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State.

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence.

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute.

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified,

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

Sec. 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this Act.

Sec. 13. When used in this act, and for the purposes of this act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or

have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employees or associations of employees; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

4. The *National Labor Relations Act* (61 Stat. 136, 29 U.S.C. § 151 *et seq.*):

Section 1. \* \* \* The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the



flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Sec. 8. (a) It shall be an unfair labor practice for an employer—

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

(b) It shall be an unfair labor practice for a labor organization or its agents—

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a). . . .

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession. . . .

Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. . . .

Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise. . . .

5. *Title II, Labor Management Relations Act, 1947* (61 Stat. 152, 29 U.S.C. § 171):—

Sec. 201. That it is the policy of the United States that—

(b) the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes. . . .

•        •        •  
Sec. 204. (a) In order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, employers and employees and their representatives, in any industry affecting commerce, shall—

(1) exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provision for adequate notice of any proposed change in the terms of such agreements. . . .

## APPENDIX E

**The Regulation of Market Operating Hours By Collective Bargaining Agreement in Areas Other Than Chicago**

1. Operating hours of both grocery and meat departments in food stores in Cuyahoga County, Ohio (which includes Cleveland and has a population of 1,647,895),<sup>1</sup> are 9:00 a.m. to 6:00 p.m., Monday through Thursday, and 8:00 a.m. to 6:00 p.m., Friday and Saturday (R. 426, 428-429, 433-434, 438). These operating hours have existed at least since 1945, except that before 1952 the hours on Wednesday were 9:00 a.m. to 1:00 p.m. (R. 434-435). The operating hours are set by the collective bargaining agreements between Retail Store Employees Union Local 880 and District Union 427, Amalgamated Meat Cutters and Butcher Workmen of North America, on the one hand, and Cleveland Food Industry Committee and Great Atlantic and Pacific Tea Company, on the other (R. 428, 433-434, 438). The agreement between Retail Store Employees Union Local 880 and Cleveland Food Industry Committee provides that (def. ex. 23, art. II):

**STORE HOURS (Cuyahoga County)**—Store operating hours in Cuyahoga County shall be as follows: Monday, Tuesday, Wednesday and Thursday, 9 a.m. to 6 p.m.; Friday and Saturday, 8 a.m. to 6 p.m.

In the six stores within Cuyahoga County in which the meat department employees are represented by District Union 427 but the grocery clerks are unrepresented, the meat department ceases operation at 6:00 p.m. and a sign is posted at the meat department stating that the 6:00 p.m. closing is pursuant to agreement with District Union 427 (R. 436-437).

<sup>1</sup> U.S. Bureau of Census, Census of Population: 1960, Vol. 1, Characteristics of Population, Part A, Number of Inhabitants, p. 37-15 (U.S. Gov. Print. Off., 1961).

Outside Cuyahoga County, in the Ohio counties of Lake, Ashtabula, and Lorain, the store operating hours are 9:00 a.m. to 6:00 p.m., Monday through Thursday, 8:00 a.m. to 9:00 p.m., Friday, and 8:00 a.m. to 6:00 p.m., Saturday, and in the Ohio county of Medina the store operating hours are 9:00 a.m. to 6:00 p.m., Monday through Wednesday, 8:00 a.m. to 9:00 p.m., Thursday and Friday, and 8:00 a.m. to 6:00 p.m., Saturday (R. 433-434). The agreement between Retail Store Employees Union Local 880 and Cleveland Food Industry Committee provides that (Def. ex. 23, art. II):

STORE HOURS (Outside County)—Store operating hours outside Cuyahoga County shall remain as presently constituted provided, however, that any employer who feels he must change hours to meet major competition will give the Union two weeks written notice of his intention before changing.

The population of Lake, Ashtabula, Lorain, and Medina Counties is 524,582.<sup>2</sup>

2. The collective bargaining agreement between Food Industry, Inc., and Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Local Union No. 81, covering meat markets in King and Kitsap Counties, Washington, which includes the principal city of Seattle, Washington, provides that (def. un. ex. 25, sec. 2 C, D):

... there shall be no selling or delivery of fresh meat before 9:00 a.m. or after 6:00 p.m. or on Sundays or holidays, nor, except within these hours shall there be any soliciting in person or by telephone for sales of fresh meat . . .

Customers, except those at the counter prior to 6:00 p.m., shall not be sold fresh meat after 6:00 p.m.

<sup>2</sup> *Id.* at p. 34-45, *supra*, p. 31a, n. 1.



The collective bargaining between Wholesale and Retail Fish Dealers of Seattle, Washington, and Retail Fish Workers Local 81, Amalgamated Meat Cutters and Butcher Workmen of North America, provides that (def. ex. 26, § 2):

No market shall be open before 9:00 A.M. or remain open after 6:00 P.M., or on Sundays or Holidays.

The population of King and Kitsap counties is 1,019,190.<sup>3</sup>

3. The agreement between Food Industry, Inc. and Amalgamated Meat Cutters and Butcher Workmen of North America Local Union No. 151, covering meat markets in Snohomish County, Washington, which includes the principal city of Everett, Washington, provides that (def. ex. 27, § II 3, 4):

... there shall be no selling or delivering of fresh meat before 9:00 A.M. or after 6:00 P.M., or on Sundays or holidays, nor, except within these hours shall there be any soliciting in person or by telephone for sales of fresh meat . . .

Customers, except those at the counter prior to 6:00 P.M. shall not be sold fresh meat after 6:00 P.M.

The population of Snohomish County is 172,199.<sup>4</sup>

4. The collective bargaining agreement at Butte, Montana, between Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 333, and Silver Bow Employers' Association, provides that (def. ex. 28, art. X, § 5):

There shall be no meat, meat products, poultry, fish, or any other article coming under the jurisdiction of the Butte Meatcutters' Union No. 333 in any type

<sup>3</sup> *Id.* at p. 49-11, *supra*, p. 31a, n. 1.

<sup>4</sup> *Ibid.*

meat case, is to be sold or handled after the hours of 6:00 P.M. or before 8 A.M.

The population of Butte, Montana, is 27,877.<sup>5</sup>

5. At Anaconda, Montana, the collective bargaining agreement between Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 384, and Meat Dealers of Anaconda, Montana, provides that (def. ex. 29, art. 1(d)):

Meat cutters, apprentices or meat wrappers shall be employed in meat markets between the hours of nine o'clock A.M. (9:00 A.M.) and six-thirty o'clock P.M. (6:30 P.M.) except as specified in Article Five.

There shall be no meat, meat products, poultry, fish or any other article coming under the jurisdiction of the Anaconda Butchers' Union, Local #384, in any type meat case or to be sold or handled after the hours of six-thirty o'clock P.M. (6:30 P.M.) or before nine o'clock A.M. (9:00 A.M.) except as provided in Sections (a) through (d) of Article Five.

The exception in Article Five authorizes overtime "to be worked only in cases of emergency. . . ." The population of Anaconda, Montana is 12,054.<sup>6</sup>

6. The collective bargaining agreement with Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union 114, covering retail meat markets in St. Paul, Minnesota, and vicinity, provides that "Monday through Friday nights until 9 P.M. shall be the only scheduled night operation under this Agreement. All markets shall close at 6 P.M. on Saturday" (def. ex. 30, p. 3). The population of St. Paul, Minnesota is 313,411.<sup>7</sup>

<sup>5</sup> *Id.* at p. 28-14; *supra*, p. 31a, n. 1.

<sup>6</sup> *Id.* at p. 28-14, *supra*, p. 31a, n. 1.

<sup>7</sup> *Id.* at 25-30, *supra*, p. 31a, n. 1.

7. At Kenosha, Wisconsin, until 1961, the collective bargaining agreement between Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union 283, and respondent and other employers, as interpreted by an arbitrator, had provided that "the sale of fresh meat is restricted to the hours of 7:00 A.M. to 6:00 P.M. Monday through Saturday, except on Friday night between the hours of 9:00 A.M. to 9:00 P.M." (R. 350-351). In 1961 a change in the agreement was negotiated to permit unlimited hours of operation (R. 349, 351). The population of Kenosha is 67,899.<sup>8</sup>

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<sup>8</sup> *Id.* at p. 51-11, *supra*, p. 31a, n. 1.

## APPENDIX F

## Defendant Union's Exhibit 5

[1961]

## JEWEL FOOD STORES

COMPARISON OF 32 STORES IN 1961 IN WHICH FRESH MEAT  
IS SOLD AFTER 6:00 P.M. WITH DIVISIONS IN WHICH  
NO FRESH MEAT IS SOLD AFTER 6:00 P.M.

	[Fresh Meat Sold After 6:00 P.M.]	[Fresh Meat Not Sold After 6:00 P.M.]					
	32 stores	Div. 2 (27 stores)	Div. 3 (27 stores)	Div. 4 (32 stores)	Div. 5 (45 stores)	Div. 6 (39 stores)	All Stores
Total Sales P.W.P.S. [per week per store]	\$28,723	\$31,612	\$26,998	\$29,679	\$27,004	\$29,588	
Total Earnings P.W.P.S.	\$ 394	\$ 1,536	\$ 1,248	\$ 1,614	\$ 1,422	\$ 1,271	
% Earnings To Sales	1.4	4.9	4.6	5.4	5.3	4.3	4.6

# APPENDIX G

1960

## COMPARISON OF THE 32 STORES IN 1960 SELLING FRESH MEAT AFTER 6:00 P.M. WITH THE DIVISIONS IN WHICH NONE OF THE STORES SOLD FRESH MEAT AFTER 6:00 P.M. IN 1960 AND WITH ALL STORES IN WHICH NO FRESH MEAT WAS SOLD AFTER 6:00 P.M. IN 1960

	Fresh Meat Not Sold After 6:00 P.M.						All Stores In Which No Fresh Meat Sold After 6:00 P.M. (216 Stores)
	Division 2 (22 Stores) def. ex. 3F, p. 2	Division 3 (27 Stores) def. ex. 3F, p. 3	Division 4 (32 Stores) def. ex. 3F, p. 4	Division 5 (45 Stores) def. ex. 3F, p. 5	Division 6 (32 Stores) def. ex. 3F, p. 6		
Sales P.W.P.S.	\$30,765	\$26,205	\$29,477	\$27,033	\$29,930		\$31,325 <sup>1</sup>
Earnings P.W.P.S.	\$ 1,617	\$ 1,356	\$ 1,636	\$ 1,527	\$ 1,452		\$ 1,509 <sup>2</sup>
% Earnings To Sales	5.3%	5.2%	5.6%	5.6%	4.9%		4.8%

32 Stores In Which Fresh Meat Sold After 6:00 P.M. def. ex. 40

Sales P.W.P.S. \$24,682  
Earnings P.W.P.S. \$ 380  
% Earnings To Sales 1.5%

<sup>1</sup> This figure is derived from the "Company Totals per Report" on the last page of def. un. ex. 3F. The total sales P.W.P.S. of \$352,633,819 are reduced by \$789,841, the latter being the total sales P.W.P.S. for the 32 stores in which fresh meat was sold after 6:00 P.M. The difference is divided by 216, the latter being the number of stores in which fresh meat was not sold after 6:00 P.M. The resultant is then divided by 52 to give the Sales P.W.P.S. for all stores not selling fresh meat after 6:00 P.M.

<sup>2</sup> This figure is also derived from the "Company Totals per Report" on the last page of def. un. ex. 3F. The total earnings of \$17,586,426 are reduced by \$632,062, the latter being the total earnings for the 32 stores in which fresh meat was sold after 6:00 P.M. The difference is divided by 216, the latter being the number of stores in which fresh meat was not sold after 6:00 P.M. The resultant is then divided by 52 to give the Earnings P.W.P.S. for all stores not selling fresh meat after 6:00 P.M.



## APPENDIX H

1959

COMPARISON OF 28 STORES IN 1959 SELLING FRESH MEAT  
AFTER 6:00 P.M. WITH THE DIVISIONS IN WHICH NONE  
OF THE STORES SOLD FRESH MEAT AFTER 6:00  
P.M. IN 1959 AND WITH ALL STORES IN WHICH  
NO FRESH MEAT WAS SOLD AFTER 6:00 P.M.  
IN 1959

	28 Stores In Which Fresh Meat Sold After 6:00 P.M. def. ex. 48		Fresh Meat Not Sold After 6:00 P.M.				All Stores In Which No Fresh Meat Sold After 6:00 P.M. (211 Stores)	
	Division 2 (39 Stores) def. ex. 3E, p. 2	Division 5 (40 Stores) def. ex. 3E, p. 5	Division 6 (30 Stores) def. ex. 3E, p. 6					
Sales P.W.P.S.	\$25,988	\$27,040	\$29,708				\$30,554 <sup>1</sup>	
Earnings P.W.P.S.	\$ 538	\$ 1,364	\$ 1,481				\$ 1,476 <sup>2</sup>	
% Earnings To Sales	2%	5.2%	5.0%				4.8%	

<sup>1</sup> This figure is derived from the "Company Totals per Report" on the last page of def. un. ex. 3E. The total sales P.W.P.S. of \$335,974,836 are reduced by \$727,671, the latter being the total sales P.W.P.S. for the 28 stores in which fresh meat was sold after 6:00 P.M. The difference is divided by 211, the latter being the number of stores in which fresh meat was not sold after 6:00 P.M. The resultant is then divided by 52 to give the Sales P.W.P.S. for all stores not selling fresh meat after 6:00 P.M.

<sup>2</sup> This figure is also derived from the "Company Totals per Report" on the last page of def. un. ex. 3E. The total earnings of \$17,004,549 are reduced by \$784,139, the latter being the total earnings for the 28 stores in which fresh meat was sold after 6:00 P.M. The difference is divided by 211, the latter being the number of stores in which fresh meat was not sold after 6:00 P.M. The resultant is then divided by 52 to give the earnings P.W.P.S. for all stores not selling fresh meat after 6:00 P.M.

## APPENDIX I

1958

COMPARISON OF STORES SELLING FRESH MEAT  
AFTER 6:00 P.M. WITH STORES NOT SELLING  
FRESH MEAT AFTER 6:00 P.M. FOR THE  
YEAR 1958

	Stores Selling Fresh Meat After 6:00 P.M.	Stores Not Selling Fresh Meat After 6:00 P.M.
Number of Stores <sup>1</sup>	20	201
Total Sales Per Week <sup>2</sup>	\$ 567,939	\$ 6,161,028
Total Earnings Per Year <sup>3</sup>	\$1,009,030	\$13,160,274
Total Sales P.W.P.S. <sup>4</sup>	\$ 28,397	\$ 30,651
Earnings P.W.P.S. <sup>5</sup>	\$ 952	\$ 1,235
% Earnings To Sales	3.3%	4%

<sup>1</sup> The total number of stores is taken from def. un. ex. 3D. The number of stores selling fresh meat after 6:00 P.M. is taken from pl. ex. 16. The difference between the total stores and the number of stores selling fresh meat after 6:00 P.M. equals the number of stores *not* selling fresh meat after 6:00 P.M.

<sup>2</sup> These figures are derived from def. un. ex. 3D. The column "Total Sales P.W.P.S." was added to obtain the grand total of sales per week for all stores. Subtracted from this grand total were the sales per week of the stores selling fresh meat after 6:00 P.M. The difference equals the sales per week of the stores *not* selling fresh meat after 6:00 P.M.

<sup>3</sup> These figures are taken from pl. ex. 16 opposite the columns titled respectively "Total annual earnings of stores selling meat at night" and "Total annual earnings of stores not selling meat at night."

<sup>4</sup> These figures are derived by dividing the total sales per week for the group of stores selling meat after 6:00 P.M. by the number of stores in that group, and by dividing the total sales per week for the group of stores *not* selling meat at night by the number of stores in that group.

<sup>5</sup> These figures are derived by dividing the total earnings of the stores selling meat after 6:00 P.M. by the number of such stores. The resultant is then divided by 53 in accordance with def. un. ex. 3D. The same method is followed for the stores *not* selling meat after 6:00 P.M.

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IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1964.

**No. 240**

LOCAL UNIONS NOS. 189, 262, 320, 546, 547, 571 AND 638,  
AMALGAMATED MEAT CUTTERS AND BUTCHER  
WORKMEN OF NORTH AMERICA, AFL-CIO, ET AL.,

*Petitioners,*

*vs.*

JEWEL TEA COMPANY, INC.,

*Respondent.*

**BRIEF IN OPPOSITION TO PETITION  
FOR CERTIORARI.**

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LOCAL UNIONS NOS. 189, 262, 320, 546, 547, 571 AND 638,  
AMALGAMATED MEAT CUTTERS AND BUTCHER  
WORKMEN OF NORTH AMERICA, AFL-CIO, ET AL.,  
*Petitioners,*

*vs.*

JEWEL TEA COMPANY, INC.,  
*Respondent.*

---

**BRIEF IN OPPOSITION TO PETITION  
FOR CERTIORARI.**

---

**OPINIONS BELOW.**

Correctly stated in the Petition, except that this Court's original denial of certiorari is reported in 362 U. S. 936, not 361 U. S.

The opinion of the Court of Appeals, not reported when the Petition was filed, now appears at 331 F. 2d 547.

**QUESTIONS PRESENTED.**

The questions presented by the record are not the questions posed in the Petition and the brief of *amicus*, both of which incorrectly state the facts and the holding below.

There is no issue as to the right of unions to bargain on an area-industry wide basis as to hours of work. The Court of Appeals assumes and preserves that right. Petitioners, outside of court, so recognize. Since the Petition was filed, they have announced publicly that, regardless of the outcome of the case, their members cannot be forced to work at night unless they wish to; that, in fact, they will not do so and that the unions have the right, and will continue, to bargain over *working hours*. See Appendix A hereto ("Chicago Butchers Will Not Work Nights Whatever Top Court Rules"). This effectively disposes of the exaggerated contention (Pet. p. 15) that the Court of Appeals decision means that "employees can have no say \* \* \* in determining the parts of the day or the days of the week that they shall work \* \* \*." The announcement reduces the Petition to proper focus and shows it to be, despite its complexity, a frivolous imposition on a burdened court, for the unions themselves recognize that *working hours*, about which the entire Petition revolves, actually are not an issue.

Thus the questions presented by the record are:

1. May meat market operators and unions representing all of the butchers in a large trading area go beyond joint bargaining as to hours of work and contract and combine to prevent any market operator therein from selling fresh meat on a self-service basis save within hours prescribed by the combination?
2. Is a contract which wholly restrains competition in the sale of fresh meat to hours which, by independent survey, are inconvenient to 34% of the public, which interferes with and lessens competition between fresh meat and other meat and food products, and which has no tendency to promote or strengthen

competition either as between products or as between vendors of meat, a reasonable restraint of trade?

3. If a restraint of trade, illegal under the Sherman Act, is embodied in a collectively bargained contract, has Congress committed primary jurisdiction to the General Counsel of the National Labor Relations Board, or to the Board, to determine whether one injured thereby may institute an action under the Clayton Act?

## STATUTES INVOLVED.

---

Provisions of the Clayton and National Labor Relations Acts pertinent to Petitioners' contentions are omitted from the Petition. They are:

1. *The Clayton Act* (38 Stat. 731, 15 U. S. C. § 15):

"4. Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

2. *The Clayton Act* (38 Stat. 737, 15 U. S. C. § 26):

"16. Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, \* \* \*."

3. *National Labor Relations Act, as amended* (61 Stat. 139, 29 U. S. C. § 153(d)):

"(d) There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. \* \* \* He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 160 of this title, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law."

**STATEMENT.**

This is an action to strike down a complete restraint on the purchase of fresh meat from self-service counters in Chicago food stores after the hour of 6:00 p.m.

Commercial development of modern refrigeration and plastic wrapping materials make it possible to prepare meat in advance, wrap it in transparent wrappers, and lodge it in open freezer cases where buyers may select the meat they desire in the evening even though the butchers who have prepared the meat are not on duty. Such evening sales are commonplace throughout the nation. However, notwithstanding public demand in the Chicago area for access to meat in the evenings, defendant unions, combining with market operators other than the plaintiff, have entered into, and enforced, a contract preventing any sale of fresh meat, i.e., ending all competition in the sale of fresh meat, after the hour of 6:00 p.m. This is in the face of the fact that supermarkets in the area are open one or more evenings a week for the sale of foods generally, including competitive poultry and meat products other than fresh red meat.

Competition between fresh meat and other foods is thus interfered with in one of the largest consuming markets in the nation. The repercussive effects of the restraint are felt by livestock producers. The National Livestock Feeders Association intervened in the Court of Appeals in opposition to the restriction, pointing out the adverse effect upon members of the Association (331 F. 2d 547).

Involved is not only competition between fresh meat and other food products but between two systems for retail sale of meat, i.e., between the traditional *service* markets (contract at App. 28) and the *self-service* markets above described (contract at App. 42). There are basic differ-



ences between the two systems of sale, viz., a service market cannot operate at all without butchers on duty; a self-service market, for limited hours, can do so, and Jewel so operates successfully in Indiana; a self-service market requires more space and more investment than a service market.

The restraint works as follows:

A Chicago citizen who comes to a Jewel food store after 6:00 p.m. will find the store open, with groceries available and the cashier on duty to accept payments for merchandise. He will see a plentiful supply of wrapped, fresh meat in the self-service cases. The butchers have completed their work on it: they have cut, trimmed, packaged, priced it and placed it in the cases. There it is, waiting a shopper's selection. Under unimpaired competitive opportunities, the shopper would do so, as is demonstrated throughout most of the nation.

The barrier between the shopper and the meat in Chicago, which Petitioners' principal officer admits stands out "like a sore thumb" (App. 115), is a sheet of butcher paper with which the "red meat" must be covered at 6:00 p.m., but which is omitted from fresh poultry and other items in the self-service cases within the jurisdiction of the combination but to which products, for reasons of outside (delicatessen) competition (App. 600), it permits access.

Although the markets theoretically may be open 9 hours for 6 days a week (54 hours), the fact is that for a substantial segment of the public the 54 hours are illusory. Because the family auto is not readily available for shopping in many working families on Mondays through Fridays, and for similar reasons, it is impossible for them to purchase fresh meat at any time save on Saturdays. Because of the restraint, 19% of Chicago area families have

been compelled to purchase unsatisfactory substitutes for fresh meat, 34% have been seriously inconvenienced (Pl. Ex. 17).

The restraining provision did not come into existence until 1947. It reads:

"Market operating hours shall be 9:00 a.m. to 6:00 p.m. Monday through Saturday, inclusive. No customer shall be served who comes into the market before or after the hours set forth above. In those stores in which the grocery departments remain open after 6:00 p.m. only the following products may be sold after 6:00 p.m. [then follows a list of semi-prepared meat products and fish and poultry items which, while within the 'jurisdiction' of unions, have been exempted from the restraint as competition outside the combination has made itself felt. App. 600]." (R. 23, 38.)

The fact is that *hours of work* are not controlled by the "Market Operating Hours" Article but by the "Working Hours" Article which provides:

"Basic Workday. Eight (8) hours shall constitute the basic workday. Work shall begin at 9:00 a.m. and shall cease at 6:00 p.m. \* \* \*" (App. 49.)

In addition, provision is made for over-time work between 8:00 and 9:00 a.m. and 6:00 and 9:00 p.m. behind locked doors in self-service markets (App. 50) and after 6:00 p.m. without limitation in service markets (App. 36). The basic work week in each instance is 40 hours, not the 54 hours during which selling is permitted.

Respondent, alleging that the limitation on hours of competition was a violation of the Sherman Act, sued for a declaratory judgment, treble damages, and injunctive relief. Petitioners moved to dismiss. The complaint was held valid by the District Court, and on appeal by the Seventh Court of Appeals in 274 F. 2d 217, Pet. p. 12a. That opinion remains important because it was specifically

re-adopted (Pet. 5a) in the second Court of Appeals opinion. Petitioners sought certiorari from the first opinion upon the "primary jurisdiction" point now urged and generally advanced the same arguments as to an asserted, indirect labor purpose now again repeated (Pet. in No. 732, Oct. Term 1959); certiorari was denied March 28, 1960 (362 U. S. 936).

### EVIDENCE.

Upon trial after remand, the contracts were proved. Plaintiff also proved that during the 1957 negotiations which led to this suit, Associated Food Retailers steadily maintained the position that hours of sale must be regulated, that if the ban was to be relaxed at all, it could be only for the second year of a two year contract term, and then only for one evening a week and upon the proviso that at least one butcher be on duty (App. 396). In other words, Associated desired continued artificial regulation of retail competition.

The probf showed that prior to suit the unions' principal officer, Emmet Kelly, said the ban was justified as a means of resistance to chain stores who wanted "to squeeze the small operators to death," whereas "true American ideals called for a free enterprise system wherein our members should have rightful opportunity of some day owning their own business" (App. 95)<sup>1</sup>; he thought the night sale of meat by chains might somehow interfere with the possibility of butchers becoming market operators (App. 96). Another official of Petitioners' admitted that the purpose of the restriction was "to protect the independent fellow" (App. 557). The fact that *working hours* were covered in other portions of the contract and such evidence as the

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1. A self-service operation requires more floor space and costlier equipment than does the traditional service market and hence is more difficult to initiate (App. 158).

foregoing show the object of the conspiracy or combination, as found by the Court of Appeals (Pet. 5a), was "to prevent commercial development."

Petitioners argued in the District Court (and in the Court of Appeals) that the limitation upon sales hours was within the antitrust exemption because its purpose was to maintain industry conditions "deemed by the union relevant to the employees' working welfare." The District Court held that since the restraint on industry-wide hours of sale arose from labor's "desire to protect its right not to work at night" (App. 672) it was within the labor exemption. However, the Court of Appeals held that setting marketing hours is not a condition of employment. It emphasized the distinction between working hours and market selling hours and held that while unions are exempt from the antitrust laws when bargaining concerning the former (or workloads), they are not exempt when they enter into agreements imposing industry-wide restraints upon competing employers on other subjects.

Both the Petition and the Brief *amicus* proceed upon the seriously erroneous premise that various expressions of fact or opinion in the District Court's Memorandum were "accepted" or were not "disturbed" by the Court of Appeals. Although the Court of Appeals did not deal with the District Court's Findings and Conclusions piecemeal, it reversed the District Court on the facts and held, squarely contrary to the District Court, that the evidence "*sustains the material allegations of the complaint.*" It reiterated its first opinion as the controlling law and applied that law to the evidence upon remand (Pet. p. 5a). It then squarely held that "*The evidence on remand supports the allegations of the complaint charging that the \* \* \* defendants, effectuated through a contract, an unreasonable restraint of trade,*" and that the complaint was supported by "convincing evidence." It thus wholly swept

aside the District Court's erroneous conclusions that the restraint was solely for labor objectives, that self-service markets could not be operated at any time without butchers on duty, and that the restraint was reasonable.

### REASONS FOR DENIAL OF THE WRIT.

The thrust of the Petition and the Brief amicus is that this case should be used as a vehicle for the exposition of new rules governing the interplay of the antitrust and labor laws. However,

1. The instant opinion promulgates no new or novel doctrine that needs correction. It simply applies existing law to particular facts of the case, holding that where the unions have fully bargained and agreed as to normal hours of work (and as to premium rates and other conditions of work outside of normal hours), they cannot go on and enter into agreements with employers to control the marketing of meat in Chicago because, in the opinion of union officials, such control would serve the "best interests" of the union members. This is precisely the evil condemned in *Allen Bradley Co. v. Local Union No. 3*, 325 U. S. 797, where unions believed market control would result in higher pay and more work for their members and thus was in their interest. Basically the Petition, no matter how many collateral points be raised, is an effort to overturn *Allen Bradley*.<sup>2</sup>

2. That the aim of the Petition and the brief amicus is to overturn *Allen Bradley* is indirectly confessed by the argument in the footnote at page 3 of the brief "against too ready a reliance" on *Allen Bradley*. Counsel attempt to distinguish *Allen Bradley* on the ground it was concerned with "product competition", whereas, so counsel assert, the instant case involves a matter of bargaining over "hours" and "other terms and conditions of employment." As we have pointed out, the Court of Appeals held this case does not involve a matter of bargaining over hours or terms of employment and Appendix A hereto shows that the unions realize they still can bargain over hours and wages. Of



2. The union contention is that the "antitrust" exemption should extend beyond the activities mentioned in Section 20 of the Clayton Act to any matter affecting the welfare of employees. As the Court of Appeals pointed out in its first opinion, nearly anything that goes on in business, as, for example, prices, sales policies, territorial limits, etc., affect the welfare of all its employees (and stockholders). What petitioners are asking, therefore, is that the Court take the case to decide whether the "labor exemption" should be broadened to exempt restraints other than those directly concerned with terms and conditions of employment. The exemption is not a blanket one nor may it properly be expanded or contracted by the courts. It is a limited statutory exemption as this Court repeatedly has held. The brief *amicus* conceals that this Court did not hold in *United States v. Hutcheson*, 312 U. S. 219 (1941), that the antitrust laws are unconcerned with the "rightness or wrongness" of *anything* a union may do, but are unconcerned only where the particular union activities involved are *those specified in Section 20 of the Clayton Act* (or Section 13 of Norris-LaGuardia). What the Court actually said was (312 U. S. at 232):

"\* \* \* the licit and illicit *under § 20* are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means." (Emphasis supplied.)

equal significance, the record shows that when Jewel asked the unions upon what terms and conditions they would agree to a change of the night restriction if all other terms of the contract were agreeable, they responded that they would state no position unless and until all of the industry, all markets, big, small, wherever situated and however equipped, agreed to stay open 24 (record erroneously reads 20) hours a day 7 days a week (App. 535-7). The proposition was too absurd for serious consideration but it demonstrated that the unions would not actually bargain over hours and insisted upon regulating the hours of sales competition within the industry whether the regulated period be short or forcefully be made so long that no one could comply.

See also *United Brotherhood of Carpenters v. United States*, 330 U. S. 395, 413 (1947), which clearly holds that although repeated efforts have been made to have Congress take trade unions from under the Sherman law, such efforts have failed and that only "specifically enumerated practices of labor unions" are exempt therefrom.

3. Section 20 of the Clayton Act (as does Section 13 of Norris-LaGuardia) exempts certain activities of unions in endeavoring to arrange "*terms and conditions of employment*." A restraint on hours of competition between merchants is not such an activity. Nor is such a restraint a labor dispute within the meaning of Section 13 of the Norris-LaGuardia Act. If the exemption is to be broadened to permit unions to combine with businesses to impose marketing restraints on the theory that higher wages or profits or less onerous work may result therefrom, or on petitioners' theory that the antitrust exemption should be made elastic because conditions are not "static" (Br. *Amicus* p. 5), the plea should be made to the Congress, not to the Court.

On the facts of this record and because it is barren of a scintilla of evidence that the market hours restriction has any tendency to promote competition, the Court of Appeals' decision is clearly in accord with prior decisions of this Court. As the Court of Appeals held, the market hours provision, in the context of the instant case, is but a naked restraint of trade obnoxious to the antitrust laws just as were the employer-union agreements in *Allen Bradley*.

Petitioners argue they are wholly free from antitrust restraint unless they conspire to aid and abet a conspiracy initiated only by employers. No case has ever so held. Petitioners assert they were the aggressors who brought about the restraint in its present form. Even if the latter

contention had a factual basis it is still immaterial, for the identical argument that union aggression in a business-labor combination resulted in antitrust exemption was rejected in *Allen Bradley*. There the union argued and District Court's approved finding stated "• • • the union was the actuating party instead of the manufacturers or employers" (41 F. Supp. at 750). The holding in *Allen Bradley* makes it clear that it is immaterial whether a restraint is originated and perpetuated by a union rather than by an employer. Whether the employers "surrender", as in *Allen Bradley*, or joyously embrace the restraint is irrelevant.

Actually petitioners talk out of both sides of their mouths—their lawyers say the unions were the aggressors, but Emmett Kelly, Secretary of the dominant Local, testified, "We accepted the majority of industry proposal" (App. 139), and agreed that he protested vigorously at placards in plaintiff's stores which placed the "onus" of the restraint on the union (App. 110). He says the restraint or closing at 6:00 p.m. is "Pursuant to an industry-union agreement" (App. 110). Since such an agreement on such a subject is illegal, it is not material who was the initiator.

If Petitioners' contentions were accepted, unions could, with impunity, initiate price fixing agreements and other antitrust violations whenever they considered the interests of their members would be served thereby. There would be no respect in which competition could be preserved against union initiated restraints—price fixing, for example, could readily be justified on the premise that increased prices would result in wage increases.

Petitioners overstate the holding of the Court of Appeals as to the function of the proprietor of a business with respect to the hours he will deal with the public. The Court did not hold, as the Petition would have it, that employees can have no say in determining the parts of the day

or the days of the week they shall work, nor did it hold that "determination" of the hours of employment for the butchers to supply meat to customers is the prerogative of the employer. It held only that the "furnishing of advantageous hours of employment for the butcher to supply meat to customers" was the prerogative of the employer. As the unions have announced in Appendix A hereto, even though the employer is free to furnish suitable hours, no one can force employees to accept what is furnished. The effect of the Court of Appeals' holding in the instant case is that, since every legitimate union objective had been attained by the provision regulating hours of work, or could be attained by additional provisions regulating workloads if such were deemed necessary, the industry-wide regulation of marketing practices was a simple restraint of trade and not a labor dispute. The cases relied upon in the petition as allegedly showing that unions have been permitted to widen the so-called exemption beyond its statutory provisions are inapplicable because, unlike the instant case, they clearly involve labor disputes and bargaining on terms and conditions of employment.

In *Telegraphers v. Chicago & N. W. Ry.*, 362 U. S. 330 (1960), the unions did not object to the railroad's decision to close stations; the bargaining was only over whether, if the stations were closed, the employees would nevertheless retain their jobs or upon what terms employees might be discharged. In *United States v. International Hod Carriers*, 313 U. S. 539 (1941) and *United States v. American Federation of Musicians*, 318 U. S. 741 (1953) the controversies were not over an employer's right to use labor-saving machinery, but over whether unions could bargain to require employers to have employees present even though the labor-saving machinery was being used, and, even though, in the opinion of the employers, the presence of employees was not necessary.

In *California Sportswear*, 54 FTC 835 (1956), the establishment of terms upon which contractors would work was construed by the Federal Trade Commission not as a restraint upon competition but, in effect, the fixing by labor and management of wages and terms and conditions of employment. Since the so-called contractors were deemed, in effect, employees, or substitutes for employees, their rates could be regulated in order to prevent employers from evading their commitments concerning union conditions of employment. Such regulation, unlike the restriction herein, was directly and intimately connected with, and therefore necessary for the protection of, union working conditions. Accordingly, *California Sportswear* is nothing more than an application of *Oliver and Lake Valley Farm*, which the Court of Appeals considered and properly distinguished in its first opinion.

**THIS CASE IS WHOLLY DIFFERENT FROM UNITED MINE WORKERS v. PENNINGTON, NO. 48 THIS TERM.**

Petitioners suggest that certiorari should be granted here because certiorari was granted in the *Pennington* case; that with the two cases before it the Court could explore the entire field of the responsibility of labor unions under the anti-trust laws. The only similarity between this case and *Pennington* is that both are brought under the anti-trust laws. The issues are not companion or related issues but are vastly different.

The questions presented in *Pennington* are whether a union may be held liable under the anti-trust laws where, with numerous employers, it has established wage rates at levels above the ability of some employers to pay, and whether union-employer co-operation in securing Governmental minimum wage rate determinations under the Walsh-Healey Act may be treated as violations of the



Sherman Act. Since the labor exemption as phrased either in Section 20 of the Clayton Act or Section 13 of the Norris-LaGuardia Act extends to activities or controversies "concerning terms and [or] conditions of employment," it is apparent that with wages the basic question, a colorable conflict existed between the Court of Appeals decision in *Pennington* and the decisions of this Court in *Apex Hosiery Co. v. Leader*, 310 U. S. 469 (1940) and *United States v. Hutcheson*, 312 U. S. 219 (1941). Moreover, insofar as the Court of Appeals decision in *Pennington* was based upon efforts to secure Governmental action under the Walsh-Healey Act, a facet of *Eastern Railroad President's Conference v. Noerr Motor Freight, Inc.*, 365 U. S. 127 (1961), was involved.

No such issues, or any kindred to them, are remotely involved in this case, in which the question was whether unions and employers may go beyond joint bargaining as to hours of employment and enter into a combination to restrain hours of sales competition in an entire industry.

**THERE IS NO PROPER ISSUE OF "PRIMARY JURISDICTION."**

The principal contention of the brief *amicus* is that by adopting the National Labor Relations Act, Congress committed to the National Labor Relations Board authority to decide whether any contract restraining trade, to which unions were parties, violated the Sherman Act. This contention is strictly one of law, and, if possessed of any validity, was as valid in the previous Petition in this case (No. 732, October Term 1959) where it was the sole "Question Presented," as in this one. It is difficult to believe the Court would have denied certiorari in 1960 and remitted the case to a protracted trial if it believed there was question of primary jurisdiction worthy of certiorari.

The point is devoid of validity, and not a scrap of legislative history is, or can be, cited in support of it. This is fatal to the point (*United States v. Borden*, 308 U. S. 188, 206 (1939)). Public policy authorizes and supports private anti-trust actions as an ancillary method of maintaining a free and competitive economy, and that policy is not to be weakened by judicial construction. *Lawlor v. National Screen Service*, 349 U. S. 322, 328, 329 (1955); *Flinkote Company v. Lysfjord*, 246 F. 2d 368, 398 (9th Cir., 1957), cert. den. 355 U. S. 835 (1957); *Klor's Inc. v. Broadway-Hale Stores*, 255 F. 2d 214, 217 (9th Cir., 1958), revs'd other points 359 U. S. 207 (1959); *Karseal Corp. v. Richfield Oil Corp.*, 221 F. 2d 358, 365 (9th Cir. 1955).

The doctrine of "primary jurisdiction" in the Interstate Commerce Commission or the Maritime Commission to pass upon anti-trust deviations in regulated businesses which are permitted certain monopolistic practices, is without relevance to the food distribution business which is fiercely competitive and should be kept so (*United States v. New York Great Atlantic & Pacific Tea Co.*, 173 F. 2d 79 (7th Cir., 1949); *United States v. New York Great Atlantic & Pacific Tea Co.*, 137 F. 2d 459 (5th Cir., 1943)).

Moreover, the contention that primary jurisdiction is in the Labor Board is not even plausible, for, because of the unique structure of that agency with division of function between the General Counsel and the Board itself, the supposed complaint ("charge") of one allegedly injured by an anti-trust violation would not go to the Labor Board but merely to its General Counsel, who, under Section 3(d) of the Labor Act, would exercise final, unappealable jurisdiction and, supposedly, if one endeavors to import some logic into the brief *amicus*, decide whether a citizen could maintain a private antitrust action. And, to make the matter even more grotesque, the General Counsel is not authorized to receive "charges" of antitrust violations but

only "charges" of unfair labor practices. The contention is too farfetched to deserve serious consideration.

Where questions involving interplay of the Sherman Act and statutes concerning rights of unions have been involved, the courts heretofore have exercised jurisdiction to decide them, for jurisdiction to entertain antitrust actions rests solely with the United States District Courts and the statutes expressly authorize private actions such as the one at bar. Such cases as *United States v. Hutcheson*, 312 U. S. 219 (1941), *Allen Bradley Co. v. Local Union No. 3*, 325 U. S. 797 (1945), and *United Brotherhood of Carpenters v. United States*, 330 U. S. 395 (1947), are in point. *International Brotherhood of Teamsters v. Oliver*, 358 U. S. 283 (1959), in which conflict between the Ohio antitrust laws and the National Labor Relations Act was resolved, again demonstrates that the courts are the place for determination of such conflicts if it be assumed they exist.

Because there is no genuine issue of primary jurisdiction, petitioners have been forced to rely on inapplicable pre-emption cases which raise the issue of the paramountcy of national labor policy over state labor policy. This paramountcy is equally true as to the antitrust responsibilities of unions under Federal law. *International Brotherhood of Teamsters, etc. v. Oliver*, 358 U. S. 283 (1959), made it clear that "Federal law sets some outside limits (not contended to be exceeded [t]here) on what their agreement may provide, see *Allen Bradley Co. v. Local Union*, 325 U. S. 797; cf. *United States v. Employing Plasterers Ass'n*, 347 U. S. 186, 190." Cases concerning the scope of bargaining on subjects not trenching upon antitrust domain, such as *N. L. R. B. v. American National Ins. Co.*, 343 U. S. 395; *N. L. R. B. v. Wooster Division of Borg-Warner Corp.*, 356 U. S. 342; *N. L. R. B. v. Insurance Agents' International Union*, 361 U. S. 477; *Fibreboard*

*Paper Products Corp. v. N. L. R. B.*, No. 14, October Term 1964, referred to by Petitioners or *amicus*, are not relevant to the present issue. They furnish no reason for certiorari in an anti-trust case for it is axiomatic that, however wide the scope of bargaining, it may not embrace anti-trust violations beyond the limited labor exemption (*Oliver, supra*). Counsel forget that courts, like the Labor Board, may not pursue "the policies of the Labor Relations Act so single-mindedly [as to] wholly ignore other and equally important Congressional objectives" (*Southern Steamship Co. v. N. L. R. B.*, 316 U. S. 31, 47 (1942)).

### OTHER QUESTIONS.

We have briefly discussed all questions by which petitioners or *amicus* seek to assert some allegedly novel or important question of law or policy. The other contentions raised by petitioners do not purport to raise such matter; they simply assert the Court of Appeals erred in its assessment of the facts of the case<sup>3</sup> and do not furnish reasons for certiorari.

Respectfully submitted,

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August 19, 1964.

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3. For example, petitioners complain of the Court of Appeals' handling of the injury and damage questions and would ask this Court to grant certiorari so that the Court of Appeals might be directed to return the case to the District Court for a detailed assessment of the facts in this regard. But this is precisely what the Court of Appeals did, so that it is obvious that petitioners' contention cannot be a valid ground for obtaining certiorari. The Court of Appeals' statement that "by detailed and persuasive evidence plaintiff has shown it has been injured," was simply an affirmation of Jewel's standing to maintain the action, certainly for an injunction, and for such monetary relief as a detailed assessment of the evidence might warrant.



## APPENDIX A.

SUPERMARKET NEWS, MONDAY, JULY 27, 1964

# Chicago Butchers Will Not Work Nights Whatever Top Court Rules

CHICAGO. — Union butchers will still refuse to work after 6 p.m. in Chicago stores even if the U. S. Supreme Court affirms a lower-court invalidation of a collective-bargaining-agreement ban on the sale of fresh meat here after that hour.

This was told to Supermarket News last week by Emmett Kelly, vice-president of the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, and director of its Chicago Division.

The curfew was ruled illegal in U. S. Court of Appeals here in May by Jewel Tea Co., and the union, joined by the AFL-CIO, is bringing the matter before the Supreme Court, which reconvenes in October.

Jewel Tea's attorney, George Christensen, told Supermarket News last week that, if the high court denies the union's appeal, Jewel will begin selling meat after

6 p.m., which it hasn't done since 1947.

He added, "My understanding is that, after the Circuit Court of Appeals decision, quite a few small independents, particularly in the southern part of the (Cook) county, began to sell meat after hours."

This was true, said Mr. Kelly, but not too many and not for long. Those that did were contacted by union business agents, and after-hours sales were quickly abandoned. There are areas in the southern part of the county, he

added, that are permitted to operate after 6 p.m. by union contract.

Mr. Kelly said, "We'll abide by the decision of the court," should the plea be denied. "All employers will then have the right to sell meat any time they please."

He added, however, it would be sold after 6 p.m. "without the benefit of any butchers being on duty. Butchers won't work without the sanction of the union."

"We have a bargaining issue—the right to sit down and bargain whether or not we will work at all and under what conditions."

"And if they attempt to, sell without the benefit of union help, then no one else could handle the meat, including the clerks, as this would be a violation of our contract."

If the decision went against the union, he explained, the meat department could be open to the public seven days a week, around-the-clock. But he said no one could straighten out, restack, do anything in cutting and servicing of meat after 6 p.m. Departments would be a shambles, he predicted.

Locals involved are 189, 262, 320, 546, 547, 571 and 638. The AFL-CIO, said Mr. Kelly, is entering the case as a friend of the court for the second such time in its history.

Office Supreme Court, U.S.

FILED

SEP 14 1964

JOHN F. DAVIS, CLERK

Nos. 240 and 321

**In the Supreme Court of the United States**

**OCTOBER TERM, 1964**

**LOCAL UNION No. 189, etc., AMALGAMATED MEAT CUT-  
TERS AND BUTCHER WORKMEN OF NORTH AMERICA,  
AFL-CIO, ET AL., PETITIONERS**

**v.**

**JEWEL TEA COMPANY, INC.**

**ASSOCIATED FOOD RETAILERS OF GREATER CHICAGO, INC.,  
ET AL., PETITIONERS**

**v.**

**JEWEL TEA COMPANY, INC.**

**ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

**MEMORANDUM FOR THE UNITED STATES AMICUS CURIAE**

**ARCHIBALD COX,**

**Solicitor General,  
Department of Justice,  
Washington, D.C., 20530.**

# **In the Supreme Court of the United States**

OCTOBER TERM, 1964

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No. 240

**LOCAL UNION No. 189, ETC., AMALGAMATED MEAT CUT-  
TERS AND BUTCHER WORKMEN OF NORTH AMERICA,  
AFL-CIO, ET AL., PETITIONERS**

*v.*

**JEWEL TEA COMPANY, INC.**

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No. 321

**ASSOCIATED FOOD RETAILERS OF GREATER CHICAGO, INC.,  
ET AL., PETITIONERS**

*v.*

**JEWEL TEA COMPANY, INC.**

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**ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

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**MEMORANDUM FOR THE UNITED STATES AMICUS CURIAE**

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These cases raise important unresolved questions concerning the interplay between the National Labor Relations, Sherman, and Norris-La Guardia Acts in situations involving multi-employer or market-wide

collective bargaining. Their clarification would facilitate collective bargaining in a number of industries.

The action was brought by the respondent, Jewel Tea Company, against seven local unions of the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, and an association of employers in the Chicago area, known as Associated Food Retailers, alleging a conspiracy to violate Sections 1 and 2 of the Sherman Act. Jewel and the members of the Association operate retail food stores in the Chicago area, which sell fresh and frozen meats (among other products). Amalgamated, through one of the locals, is the bargaining representative of the employees who process, wrap, handle and sell the meat at the various stores. For many years the collective bargaining agreements governing the meat departments in retail stores had established limitations on working and marketing hours. In 1957, 1959, and 1961 those provisions were the subject of intensive discussion, but Amalgamated ultimately prevailed in its demand that Associated Food Retailers and other stores execute a collective bargaining agreement containing the stipulation that (Pet. No. 240, 15a)—

Market operating hours shall be 9:00 a.m. to 6:00 p.m. Monday through Saturday, inclusive. No customer shall be served who comes into the market before or after the hours set forth above.

Jewel also signed a contract containing this stipulation, but subsequently it brought the present action attacking the clause as a conspiracy among labor and non-labor groups in violation of the Sherman

Act. The district court held that there was no violation of the Sherman Act because "the purport, history, and effect of the converted provision indicates that it is within the labor exemption of the Sherman Act \* \* \* and that it imposed no 'unreasonable' restraint on trade" (R. 678). The court of appeals reversed, holding (Pet. No. 240, 7a)—

The hours of the day when his business is to be open to accommodate the demands of customers, in the judgment of the owners of the business, is not a condition of employment \* \* \*. As long as all rights of employees are recognized and duly observed by the employer, including the number of hours per day that any one shall be required to work, any agreement by a labor union, acting in concert with business competitors of the employer, designed to interfere with his operation of a retail business, engaged in handling products in the course of interstate commerce, is a violation of the Sherman Act, and not entitled to the exemption therefrom claimed by the defendant unions in this case.

The decision below, which we believe to be erroneous, is of concern to the United States for three reasons.

*First*, although, strictly speaking, it interprets only the phrase "terms or conditions of employment" in Section 13(c) of the Norris-La Guardia Act, its necessary implication is to limit the scope of the subjects of mandatory collective bargaining under Sections 8(a)(5) and 8(d) of the National Labor Relations Act. Not only are the words of the two statutes so



similar as to make a difference in interpretation unlikely,<sup>1</sup> but also the court below expressly held that the determination of what days and hours a business will be open is one of the proprietary functions of management with which collective bargaining may not be concerned (Pet. No. 240, 6a).

*Second*, the decision below curtails the permissible scope of collective bargaining by subjecting to liability to an injunction and damages unions and employers who reach a negotiated agreement concerning such topics.

*Third*, uncertainty concerning the application of the Sherman Act to multi-employer agreements upon subjects which have been a familiar part of collective bargaining but which might be designated as involving "proprietary functions" under the decision below, is bound to have an unsettling effect upon many

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<sup>1</sup> Section 13(c) of the Norris-La Guardia Act, 29 U.S.C. 113(c), defines "labor dispute" to include any controversy concerning "terms or conditions of employment \* \* \*." Section 8(a)(5) of the National Labor Relations Act, 29 U.S.C. 158(a)(5), read in conjunction with Section 9(a), to which it refers, makes it an unfair labor practice for an employer to refuse to bargain collectively with a representative of his employees with respect to "wages, hours of employment, or other conditions of employment \* \* \*." Section 8(d) of the Labor Act defines collective bargaining as meeting and conferring by an employer and the representative of employees "with respect to wages, hours, and other terms and conditions of employment \* \* \*." The meaning of the words "terms and conditions of employment" and "conditions of employment" in the National Labor Relations Act will be discussed in the brief of the National Labor Relations Board to be filed shortly in *Fibreboard Paper Products Corporation v. National Labor Relations Board*, No. 14, this Term.

labor-management negotiations. While we have no reason to believe that the decision, if unreversed, will produce immediate crises, it seems apparent that clarification of the application of the Sherman Act to multi-employer bargaining will avoid potential difficulty.

The issues raised by the decision below are closely related to some of the questions presented in *United Mine Workers of America v. Pennington*, No. 48, this Term. We have not filed a brief *amicus curiae* in the *United Mine Workers* case because it involves a number of peculiar facts and also because the antitrust issues appear to turn chiefly upon the detailed analysis of a voluminous record. If certiorari is granted in the present cases and they are set down for argument with *United Mine Workers v. Pennington*, we would expect to file in the present cases a comprehensive statement of the principles—so far as here relevant—which the United States believes should govern the application of the antitrust laws to multi-employer collective bargaining.

Respectfully submitted.

ARCHIBALD COX,  
*Solicitor General.*

SEPTEMBER 1964.

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**Supreme Court of the United States**

**Petition for Writ of Habeas Corpus**

**Case No. 100 and 101**

**LOUISIANA DEPARTMENT OF REVENUE, et al., vs. THE  
ASSOCIATED FOOD RETAILERS OF GREATER  
CHICAGO, INC., et al.,**  
*Petitioners,*

**JEWEL TEA COMPANY, INC.,**

*Respondent.*

**ASSOCIATED FOOD RETAILERS OF GREATER  
CHICAGO, INC., et al.,**  
*Petitioners,*

**JEWEL TEA COMPANY, INC.,**

*Respondent.*

**RESPONSE TO MEMORANDUM FOR THE UNITED  
STATES**

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1964.

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**No. 240.**

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LOCAL UNIONS NOS. 189, 262, 320, 546, 547, 571 and 638,  
AMALGAMATED MEAT CUTTERS AND BUTCHER  
WORKMEN OF NORTH AMERICA, AFL-CIO, ET AL.,  
*Petitioners,*

*vs.*

JEWEL TEA COMPANY, INC.,  
*Respondent.*

---

**No. 321.**

ASSOCIATED FOOD RETAILERS OF GREATER  
CHICAGO, INC., ET AL.,  
*Petitioners,*

*vs.*

JEWEL TEA COMPANY, INC.,  
*Respondent.*

---

**RESPONSE TO MEMORANDUM FOR THE UNITED  
STATES.**

---

The Memorandum of the Solicitor General does not urge the Court to grant certiorari, claim that the decision below is in conflict with any decision of this Court, or that any vital activity of the Government is involved. While

the Solicitor is of the opinion the decision is erroneous, he does not say why. In any event mere error is not ground for certiorari.

If the Memorandum be distilled to its essence it will be seen it says simply that if certiorari should be granted the Solicitor General would file a "comprehensive statement of principles" which he believes should govern the application of the antitrust laws to multi-employer collective bargaining. However, multi-employer collective bargaining as such is not in issue for the decision below in no way condemns or impinges upon it. In accord with the principles heretofore established in *Allen Bradley Co. v. Local Union No. 3*, 325 U. S. 797 (1945), it simply reaffirms that such bargaining may not embrace commercial restraints of trade save in such instances as they directly concern terms and conditions of employment as permitted by *Teamsters Union v. Oliver*, 358 U. S. 283 (1959). Both of those cases are discussed and followed in the first Court of Appeals opinion herein (Pet. 12a, *et seq.*) which is specifically readopted by the second opinion (Pet. at 5a). Thus the Court of Appeals promulgated no new doctrine but simply evaluated particular facts within existing guide lines established by this Court.

1. Since there is no indication in the Memorandum as to what impelled its presentation, we trust, with due and friendly respect to the Solicitor General, that we may observe that its expression, usual in documents emanating from the office of the Solicitor General, that it represents the views of "the United States" is, in the circumstances, perhaps mere conventional gloss. One would have supposed that "the United States," or at least the Antitrust Division, would be "concerned" that there was a combination denying the people of Chicago reasonable access to fresh meat rather than being "concerned" over a unanimous decision that such restraint is illegal. What the



Memorandum overlooks is that convenience of shopping hours is an important element of commercial competition. The restraint at bar eliminates that element just as the price fixing agreements and territorial restrictions in *Allen Bradley* eliminated other elements.

2. The Memorandum picks at, and would divorce the short phrase "proprietary functions" from the context of the record; it speculates that in the future some court may expand use of the phrase to ban multi-employer labor contracts on "familiar" subjects, i.e., terms and conditions of employment. The speculation is unwarranted. If the supposed danger should ever arise it could be met.

3. The Solicitor General has misconceived the facts: The Memorandum assumes (p. 2) that the defendant unions represent butchers who prepare and "sell the meat." But the record is completely clear that in self-service meat markets the butchers *do not sell meat*. The customer selects the meat from a self-service case and carries it to the store cashier (who is a member of a totally different bargaining unit whose members are on duty after butchers have ceased to work), and there purchases it (App. 551). There is no necessity, in a self-service market, for butchers to be present at all hours when meat is purchased. The Solicitor General errs in his apparent assumption to the contrary.

4. The failure of the Memorandum to confine itself to the record and its assumption that it would be proper for the Solicitor General to postulate "a comprehensive statement of general principles" on the general subject matter unfortunately amounts, in our humble opinion, to an invitation to the Court to permit the Solicitor General, and perhaps itself, to roam at large through legislative territory.

And even were such a deployment proper, this case would not furnish a suitable vehicle for establishment of "gen-

4

eral principles" because a self-service retail meat market presents an operating situation quite different from those of general industry. In general industry hours of work necessarily are the same, in most instances, as those during which the enterprise may function. But purchases in a self-service meat market may be made without the intervention of a butcher. The opinion at bar therefore strikes down a unique and atypical effort by an employer-union combination to go entirely beyond the matter of hours of work for employees in the bargaining units involved to inhibit competition as to hours during which market operators permit the public to make purchases. Because the case is atypical the decision creates no "uncertainty" as to "subjects which have become a familiar part of collective bargaining" — the issue here is not as to such subjects.

There can be no logical or tenable objection to the Court of Appeals ruling on the facts of this record that hours in which a merchant may keep his store open to enable customers to make self-service purchases of meat is not the same thing as hours of employment for butchers. Regulation of the former is not necessary to protect the right of unions to bargain as to the latter.

Respectfully submitted,

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September 21, 1964.

**MOTION FILED**

**JUL 10 1964**

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**SUPREME COURT, U. S.**

**NO. 340**

**IN THE**  
**Supreme Court of the United States**

**OCTOBER TERM, 1964**

**LOCAL UNIONS NOS. 189, 262, 320, 546, 547, 571 AND 638,  
AMALGAMATED MEAT CUTTERS AND BUTCHER  
WORKMEN OF NORTH AMERICA, AFL-CIO, ET AL.,**  
*Petitioners,*

*v.*

**JEWEL TEA COMPANY, INC.**

**ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

**MOTION FOR LEAVE TO FILE A BRIEF  
AS AMICUS CURIAE  
AND BRIEF FOR THE  
AMERICAN FEDERATION OF LABOR  
AND CONGRESS OF INDUSTRIAL ORGANIZATIONS  
AS AMICUS CURIAE**

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1964

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NO. 240

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LOCAL UNIONS NOS. 189, 262, 320, 546, 547, 571 AND 638;  
AMALGAMATED MEAT CUTTERS AND BUTCHER  
WORKMEN OF NORTH AMERICA, AFL-CIO, ET AL.,

*Petitioners,*

v.

JEWEL TEA COMPANY, INC.

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

---

MOTION FOR LEAVE TO FILE A BRIEF  
AS AMICUS CURIAE

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The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) hereby respectfully moves for leave to file a brief as *amicus curiae* in support of petitioners' petition for a writ of certiorari. The consent

of the attorneys for the petitioners has been obtained. The consent of the attorneys for the respondent was requested but refused.

Only once before since the merged AFL-CIO came into being in 1955 has the Federation asked leave of this Court to file an *amicus* brief urging grant of a writ of certiorari. We do so again at this time for compelling reasons. The court below held that petitioner unions violated the Sherman Antitrust Act through a provision in their labor contract setting limitations on market operating hours. The issues posed by such a holding are highly significant in themselves. Even more important, the doctrine enunciated by the Court of Appeals carries with it profoundly disturbing implications for the whole institution of collective bargaining. In addition, this Court's previous undertakings to review at the forthcoming Term certain other decisions presenting related questions\* make it urgent that the Court now have the benefit of the added illumination the instant case throws on the interconnected problems of managerial prerogatives, union-management bargaining duties under the labor relations law, and union liabilities under the anti-trust laws.

Petitioners in their petition for a writ of certiorari are necessarily most concerned with these problems as they affect their own particular situation. The AFL-CIO is concerned with these problems as they affect the main body of the American labor movement. We desire to place before this Court a short outline of the Federation's reasons for believing that resolution by this Court of the issues raised

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\* See *Mine Workers v. Pennington*, 325 F. 2d 804 (6th Cir. 1963) (union's insistence upon standard wage clause in labor contract as antitrust violation), *cert. granted* May 18, 1964, pending in No. 48, October Term, 1964; *Fibreboard Paper Products Corp. v. NLRB*, 322 F. 2d 411 (D.C. Cir. 1963) (employer's duty to bargain regarding subcontracting), *cert. granted* 375 U.S. 963, pending in No. 14, October Term, 1964.

in the present case is essential for the continued effectuation of our national labor policy. A brief containing such a presentation is tendered with this motion.

Respectfully submitted,

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July 1964

IN THE  
**Supreme Court of the United States**

**OCTOBER TERM, 1964**

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**NO. 240**

---

**LOCAL UNIONS NOS. 189, 262, 320, 546, 547, 571 AND 638,  
AMALGAMATED MEAT CUTTERS AND BUTCHER  
WORKMEN OF NORTH AMERICA, AFL-CIO, ET AL.,**  
*Petitioners,*

*v.*

**JEWEL TEA COMPANY, INC.**

---

**ON PETITION FOR A WRIT OF HABEAS CORPUS TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

---

**BRIEF FOR THE AMERICAN FEDERATION OF LABOR  
AND CONGRESS OF INDUSTRIAL ORGANIZATIONS  
AS AMICUS CURIAE**

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**INTEREST OF THE AFL-CIO**

This brief *amicus curiae* is tendered for filing by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), contingent upon the Court's granting the Motion for Leave to File a Brief as Amicus Curiae.

Affiliated with the AFL-CIO are national and international labor organizations representing about thirteen mil-

lion members. Millions of these employees are covered by collective bargaining agreements which, either as a result of joint negotiations between unions and multi-employer associations or as a result of "pattern" bargaining with certain market leaders, establish more or less standardized wages, hours, and working conditions in an industry or geographical area. The legality of these contracts might well be called into question under the principle espoused by the court below. Furthermore, the continued effectiveness of collective bargaining as an instrument for coping with the new and unprecedented labor problems created by a rapidly evolving technological society could be seriously jeopardized by any arbitrary, artificial limitation on the type of subject that may be dealt with through union-employer negotiations and agreements.

Concern about sustaining the validity of its affiliates' existing contractual arrangements, and concern about ensuring the future vitality of the whole collective bargaining process, give the AFL-CIO a direct and compelling interest in the outcome of the present litigation.

### **REASONS FOR GRANTING THE WRIT**

1. This Court has already done much to mark out the boundary lines between federal and state substantive law and between court and agency jurisdiction in the field of labor relations. Where conduct is "arguably subject to §7 or §8" of the National Labor Relations Act, the courts, both federal and state, "must defer to the exclusive competence" of the NLRB, *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 245, unless the conduct also constitutes a breach of a collective bargaining agreement and is actionable under section 301 of the Taft-Hartley Act, *Smith v. Evening News Assn.*, 371 U.S. 195. In any nonviolent dispute, if the federal labor law is applicable, it prevails to the exclusion of state tort law, *Garmon, supra*, state contract law, *Teamsters Local 174 v. Lucas Flour Co.*, 369 U.S.



95, or state antitrust law, *Teamsters Local 24 v. Oliver*, 358 U.S. 283.

The instant case presents additional critical questions on this perennial topic. Is conduct which is regulated by the National Labor Relations Act no longer subject to the exclusive primary jurisdiction of the Labor Board if the allegation is that the conduct violates the *federal* antitrust laws?<sup>1</sup> Even if a federal court has jurisdiction over such a suit, is the court under an obligation to read the federal labor law and the federal antitrust laws as a "harmonizing text" so as not to render union conduct which is lawful under the former unlawful under the latter? Cf. *United States v. Hutcheson*, 312 U.S. 219, 231; 236. To state these questions is to demonstrate the need for answers from this Court.

The Court of Appeals below held that petitioner unions violated the Sherman Antitrust Act by executing a labor contract with a grocers' association which included a clause limiting the hours for the sale of fresh meat from 9 a.m. to 6 p.m., Monday through Saturday. The respondent employer claimed it was forced by a union strike threat to agree to the same provision. As can readily be shown, the union either had the right under the federal labor law to insist on the clause in question to the point of an impasse in negotiations, or else was guilty of an unfair labor practice for which the employer was entitled to a Labor Board remedy.

The National Labor Relations Act expressly requires

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<sup>1</sup> There was no such thing as a union unfair labor practice when this Court in 1945 decided *Allen Bradley Co. v. IBEW Local 3*, 325 U.S. 797. That alone may caution against too ready a reliance on this decision as a touchstone in present-day union-management controversies. In addition, of course, *Allen Bradley* dealt with a restraint upon product competition, while, as discussed in the text, the instant case involves a matter of bargaining over "hours" and "other terms and conditions of employment" that is central to the regulatory design of the National Labor Relations Act.

unions and employers to bargain over "hours" and "other terms and conditions of employment." 61 Stat. 141-42, §§ 8(a)(5), 8(b)(3), 8(d) (1947), 29 U. S. C. §§ 158(a)(5), 158(b)(3), 158(d). The NLRB has long held that this encompasses a duty to bargain over working schedules and reductions in the job content of the bargaining unit. *Timken Roller Bearing Co.*, 70 NLRB 500, 504 (1946).<sup>2</sup> See also *Town & Country Mfg. Co.*, 136 NLRB 1022 (1962), enforced 316 F.2d 846 (5th Cir. 1963). A meat department's operating hours would seem so integral a function of the work schedules and job content of the butchers as necessarily to be embraced within the same duty to bargain. Cf. *Teamsters Local 24 v. Oliver*, 358 U.S. 283, 293-94. But in any event this presents an issue for Labor Board determination. If the marketing hours were a mandatory subject of collective bargaining, the union's insistence on them would have been lawful; if they were not, the union's insistence would have amounted to an unlawful refusal to bargain. See *NLRB v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342, 349.

In the past this Court has recognized the need, in federal-state relations, of "delimiting areas of potential conflict \*\*\* of rules of law, of remedy, and of administration," with the "unifying consideration" of decision being "regard to the fact that Congress has entrusted administration of the labor policy for the Nation to a centralized administrative agency." *Garmon*, 359 U.S. at 242. We suggest that where particular conduct falls within the regulatory scheme of the National Labor Relations Act, the administration of national labor policy by the designated federal agency might be as much imperilled through the regulation of such conduct by the federal courts applying the federal antitrust

<sup>2</sup> *Enf. den. on other grounds* 161 F.2d 949 (6th Cir. 1947); cited with approval by this Court in *Teamsters Local 24 v. Oliver*, 358 U.S. 283, 295. See also *Railroad Telegraphers v. Chicago & North-Western R. Co.*, 362 U.S. 330 (ban on abolition of jobs a bargainable issue under the Railway Labor Act).

laws as through its regulation by state courts applying state tort, contract, or antitrust law. At any rate, it is essential for this Court to lay down the ground-rules to govern the separate roles of, or the allowable interplay between, the federal labor laws and the federal antitrust laws.

2. Apart from any questions about the impact of the labor relations laws, the decision of the Court of Appeals below presents the most serious questions regarding the interpretation of the antitrust laws and the extent of union immunity from those laws.

As long ago as *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 495, 497, 500, 503-04, this Court made clear that only restraints on "commercial competition" were the target of the antitrust laws, and that "an elimination of price competition based on differences in labor standards . . . has not been considered to be the kind of curtailment of price competition prohibited by the Sherman Act." (Emphasis supplied.) Labor standards have traditionally embraced hours of work no less than rates of pay.<sup>3</sup> The trial court found that the limitation on marketing hours in this case was fashioned by the union exclusively for the purpose of serving the employees' interest in the hours worked, work

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<sup>3</sup> See, e.g., 1 Commons et al., *History of Labor in the United States* 536 ff. (1918); 2 id. at 96 ff., 509-10; Rayback, *A History of American Labor* 181-84 (1959). See also *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 504, n. 24: "Federal legislation aimed at protecting and favoring labor organizations and eliminating the competition of employers and employees based on labor conditions regarded as substandard, through the establishment of industry-wide standards both by collective bargaining and by legislation setting up minimum wage and hour standards, supports the conclusion that Congress does not regard the effects upon competition from such combinations and standards as against public policy or condemned by the Sherman Act." (Emphasis supplied.) In the contemporary bargaining scene, labor economist Lloyd Reynolds has found that "[m]ost contracts also regulate the times of the day and week during which the standard hours are to be worked." Reynolds, *Labor Economics and Labor Relations* 221 (3d ed. 1959). (Emphasis supplied.)

performed, and wages received (R. 672-73). Despite this, the Court of Appeals declared that marketing hours were solely a matter for managerial determination, not a condition of employment, and that union-induced restrictions on them were an unlawful restraint of trade. We regard this as directly contrary to the philosophy of *Apex*.

Whatever the end sought by a union, however, that in itself does not suffice to establish the union's liability under the antitrust laws. A labor organization runs afoul of the Sherman Act only where it acts to restrain trade "in combination with business groups . . . which are directly interested in destroying competition." *Allen Bradley Co. v. IBEW Local 3*, 325 U.S. 797, 810-11. See also *United States v. Hutcheson*, 312 U.S. 219, 232. For the trial court, the record here was "devoid of any evidence to support a finding of conspiracy" (R. 670, 683-84, 658). The Court of Appeals swept past this factual finding by holding the collective bargaining agreement itself constituted the conspiracy. Wholly ignored was this Court's assumption that even the restrictive agreement in *Allen Bradley*, "standing alone would not have violated the Sherman Act." 325 U.S. at 809.

Put simply, then, the issues are (1) whether a clause in a labor contract aimed at defining the employees' working hours can be treated as the type of restraint on "commercial competition" which falls within the ambit of the Sherman Act; and (2) whether the indispensable finding of a business combination in restraint of trade can be predicated solely upon a union-sought clause in a collective bargaining agreement with a multi-employer association, in the absence of any independent evidence of an employer conspiracy in which a union has joined. The court below in effect answered both questions in the affirmative. In so doing it bore grim testimony to the perceptiveness of Columbia Law School Professor Michael Sovern's recent warning that "under the guise of applying *Allen Bradley*,

the courts could conceivably grab back a considerable measure of the power taken from them by the Clayton and Norris-LaGuardia Acts.”<sup>4</sup>

That is where the road taken by the Court of Appeals necessarily leads. The core of the decision below is that marketing hours are “not a condition of employment” because “whether fresh meats are to be sold after 6 P.M. depends upon the convenience and requirements of the people living within shopping distance of the place of business”; determinations of the “hours of employment for the butchers to supply meat to customers are the prerogatives of the employer.” *Jewel Tea Co. v. Associated Food Retailers*, 331 F. 2d 547, 549. (7th Cir. 1964). The Court of Appeals consulted its catalogue of meritorious social objectives, and found a union’s supposed interference with convenient shopping hours not included. Thus would it open a new chapter in the long, sorry tale which we thought had come to an end when this Court uttered its strictures against “any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means.” *United States v. Hutcheson*, 312 U.S. 219, 232.

There is no need to recount the proven inadequacies of past judicial regulation of union conduct via the antitrust laws.<sup>5</sup> It is therefore imperative that this Court review this latest, and potentially far-reaching, theory whereby the judiciary could once again become the arbiter of socially acceptable labor activity.

3. The implications of the decision below extend much beyond the present case. In today’s world, employee combinations to restrain “competition among themselves in the

<sup>4</sup> Sobern, “Some Ruminations on Labor, the Antitrust Laws and *Allen Bradley*,” 13 Lab. L. J. 957, 962 (1962).

<sup>5</sup> See generally Frankfurter and Greene, *The Labor Injunction* 200 (1930); Witte, *The Government in Labor Disputes* 61-74 (1932); Cox, “Labor and the Antitrust Laws—A Preliminary Analysis,” 104 Univ. Pa. L. Rev. 252, 265 (1955).



sale of their services to the "employer," which according to this Court are not the concern of the antitrust laws, *Apex Hosiery*, 310 U.S. at 502, require for their effectuation more or less standardized labor contracts in an industry or geographical area. These are generally secured either through bargaining with multi-employer associations or through bargaining with market leaders that sets a "pattern" for agreements with other firms. Both methods might be called into question under the reasoning of the Court of Appeals.

Between 80 and 100 percent of the workers under union agreement are covered by multi-employer contracts in such important industries as men's and women's clothing, coal mining, building construction, hotels, longshoring, maritime, trucking, and warehousing. Between 60 and 80 percent of unionized workers are under multi-employer pacts in baking, book and job printing, canning and preserving, textile dyeing and finishing, glass and glassware, malt liquor, pottery, and retail trades. Professor Lloyd Reynolds of Yale, after citing these figures, adds: "There seems also to be a clear tendency for the proportion of unionists covered by multi-employer agreements to increase over the course of time."<sup>6</sup> Furthermore, in some other major industries relatively uniform terms of employment are obtained through the negotiation of a contract with one leading employer and the subsequent acceptance of that contract's key provisions, with only minor modifications, by the other employers in the industry.<sup>7</sup>

<sup>6</sup> Reynolds, *Labor Economics and Labor Relations* 170 (3d ed. 1959).

<sup>7</sup> See Chamberlain, *Collective Bargaining* 275 ff. (1951). The steel industry until recently supplied a classic example of pattern bargaining. Now negotiations partake more of the nature of multi-employer bargaining, with the union and a committee representing the larger producers agreeing on an "economic package" and certain other critical terms of employment, which are then incorporated into the various individual labor contracts. See 45 LRRM 11-20 (1960); 49 *id.* 13-19 (1962).

The ruling below would thus hamstring widespread, increasingly used bargaining procedures, at least whenever bargaining ventured into an area thought by a court to involve a "managerial prerogative" and not a "condition of employment." But such categories are not static. As labor economist Neil Chamberlain has observed: "With changing economic, social and political relationships, issues which were once of no concern to the workers because presumably beyond their control or not immediately affecting their welfare become of direct interest, with the possibility of control discovered or created."<sup>8</sup>

The NLRB, in another context, also has emphasized that in "an evolving industrial complex," collective bargaining questions must be approached with an awareness they "are being affected by automation and technological changes and other forms of industrial advancement." See *American Cyanamid Co.*, 131 NLRB 909, 911-12 (1961). Solving the new and unprecedented labor problems arising in this dynamic situation demands of collective bargaining the utmost creativity and flexibility. Yet the Court of Appeals below would freeze today's bargaining in yesterday's outworn mold. If the central institution of American labor relations is to meet the challenge of changing times, this Court must see that it is not thwarted by anachronistic notions of federal law.

In *Mine Workers v. Pennington*, No. 48, October Term, 1964, the Court already has before it a case in which the lower federal courts grounded an antitrust violation in part on a union's insistence upon a standard wage clause in a labor contract.<sup>9</sup> The present case, with its different but closely analogous facts, would shed valuable additional

<sup>8</sup> Chamberlain, *Collective Bargaining* 333 (1951).

<sup>9</sup> The Court will also review, in *Fibreboard Paper Products Co. v. NLRB*, No. 14, October Term, 1964; an important Labor Board ruling regarding the scope of an employer's bargaining duty.

light on the dimensions of the issues in *Pennington*. This is especially true because the varying results in the trial courts in these two cases would enable this Court to view the questions raised with a sharper appreciation of their implications in terms of both the law to be applied and the latitude to be allowed the fact-finder. We respectfully suggest that the two cases ought to be argued and considered together.

### CONCLUSION

For the foregoing reasons, and for the reasons set forth by petitioners in their petition, a writ of certiorari should be granted, and the case should be set down for argument in conjunction with *Mine Workers v. Pennington*, No. 48, October Term, 1964.

Respectfully submitted,

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July 1964

NOV 27 1964

JOHN F. STONE, JR.

IN THE  
**Supreme Court of the United States**

October Term, 1964

No. 240

LESTER ASHER, LEO SEGALL, BERNARD DUNAY, ROBERT C. MARBLEY  
ANTHROPOMETRIC MEASUREMENTERS AND BUTCHER WORKMEN  
OF NORTH AMERICA, AFL-CIO, ET AL., *Petitioners*

JEWELL TV COMPANY, INC., *Respondent*

On Writ of Certiorari to the United States Court of Appeals  
for the Seventh Circuit

**BRIEF FOR PETITIONERS**

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1964

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No. 240

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LOCAL UNIONS NOS. 189, 262, 320, 546, 547, 571 and 638,  
AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN  
OF NORTH AMERICA, AFL-CIO, ET AL., *Petitioners*

v.

JEWEL TEA COMPANY, INC., *Respondent*

---

On Writ of Certiorari to the United States Court of Appeals  
for the Seventh Circuit

---

**BRIEF FOR PETITIONERS**

---

**OPINIONS BELOW**

The opinion of the Court of Appeals is reported at 331 F. 2d 547 (R. 691-698). The opinion of the District Court is reported at 215 F. Supp. 839 (R. 661-678). The prior opinion of the Court of Appeals on the interlocutory appeal, affirming denial of the motion to dismiss the com-



plaint, is reported at 275 F. 2d 217, cert. denied, 362 U.S. 936. The initial opinion of the District Court, holding that the complaint was sufficient to withstand a motion to dismiss, is reported at 36 CCH Lab. Cas. ¶65, 344 (R. 58-65).

### **JURISDICTION**

The judgment of the Court of Appeals was entered on April 27, 1964 (R. 699). The petition for a writ of certiorari was granted on October 12, 1964 (R. 701). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

### **QUESTIONS PRESENTED**

Collective bargaining agreements governing employment terms of meat departments in retail food stores in the Chicago area provide that market operating hours for the sale of fresh meat shall be from 9:00 a.m. to 6:00 p.m., Monday through Saturday. With variations as to the specific hours, regulation of market operating hours by collective bargaining agreement has existed in the Chicago area since 1919. The order granting certiorari limited the questions to the following two (R. 701):

1. Based on the District Court's undisturbed finding that the limitation "was imposed after arm's length bargaining, . . . and was fashioned exclusively by the unions to serve their own interests—how long and what hours members shall work, what work they shall do, and what pay they shall receive" (R. 672), whether the limitation upon market operating hours and the controversy concerning it are within the labor exemption of the Sherman Antitrust Act.

2. Whether a claimed violation of the Sherman Antitrust Act which falls within the regulatory scope of the National Labor Relations Act is within the exclusive primary jurisdiction of the National Labor Relations Board.

## STATUTES INVOLVED

The pertinent provisions of the Sherman Antitrust Act (26 Stat. 209, 15 U.S.C. § 1), the Clayton Act (38 Stat. 738, 15 U.S.C. § 12), the Norris-LaGuardia Act (47 Stat. 70, 29 U.S.C. § 101), and the National Labor Relations Act (61 Stat. 136, 29 U.S.C. § 151) are set forth in Appendix A, *infra*, pp. 119-126.

## STATEMENT

### I. THE PARTIES TO THE ACTION; THE GIST OF THE COMPLAINT; THE PROCEEDINGS IN THE COURTS BELOW.

Respondent Jewel operates food stores in Chicago and an area fauning from it through its Jewel Food Store Division, one of six divisions comprising its total business structure (R. 342-343, 344-348, def. exs.<sup>1</sup> 9, 10). Jewel first entered the food store business in Chicago in March 1932, and first began to operate meat departments in its Chicago stores in 1933 or 1934 (R. 313, 315).

Petitioners are seven local labor unions, composed of butchers or meat cutters, and their named officers and representatives. Each union is a separate autonomous labor organization (R. 573). Of the seven, Local 189 occupies a special position, and is divided for contract purposes into six different geographic groups denominated 1, 1A, 2, 3, 3A, and 4 (R. 352-353). The territorial jurisdiction of the seven unions, but including only group 1 of Local 189, is confined to the Illinois area embracing Chicago and the suburban perimeter surrounding it (R. 348, 83-87, 1x.<sup>1a</sup>).

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<sup>1</sup> In this brief "def. ex." refers to the union's exhibits, "pl. ex." to Jewel's exhibits, and "Tr." to the original transcript of testimony. Occasional reference is made to these when the matter is not included in the printed record.

<sup>1a</sup> The record is printed in two volumes. One volume, paginated 1 to 702, contains the pleadings, testimony, and proceedings below. The other volume, paginated 1 to 254, contains the exhibits. To differentiate the two, reference to the page number of an exhibit is followed by the letter "x."

In this brief this territory will be called the Chicago area. It is not coterminous with, but is instead a smaller area contained within, the territory occupied by Jewel Food Store Division (R. 344-348, def. exs. 9, 10). Within the Chicago area virtually all qualified meat cutters are members of the unions (R. 90). Local 546<sup>2</sup> has 5,000 members; Local 547, 700 members; Local 638, 700 members; Local 571, 240 members; Local 320, 650 members; Local 262, 450 members; and Local 189, group 1, 475 members (R. 1x, 84-86, Tr. 149).

Associated Food Retailers of Greater Chicago is a not-for-profit employer association representing independent food stores in collective bargaining, and Charles H. Bromann is its secretary and treasurer (R. 17, 74).

The complaint alleged a conspiracy in violation of the Sherman Act among Associated, its members, and its secretary and treasurer to eliminate competition in the sale of fresh meat after 6:00 p.m., by insistence that all collective bargaining agreements between food store operators and the unions within the Chicago area shall contain a provision limiting marketing operating hours from 9:00 a.m. to 6:00 p.m., Monday through Saturday; and it further alleged that this conspiracy was aided and abetted by defendant unions, their members, and their officers and representatives as co-conspirators (R. 14-27). Upon interlocutory appeal the Court of Appeals affirmed the District Court's determination that the complaint was sufficient to withstand a motion to dismiss. *Jewel Tea Co. v. Local Unions*, 274 F. 2d 217, cert. denied, 362 U.S. 936. It held, first, that the activity attributed to the defendants was not within the exclusive primary jurisdiction of the National Labor Relations Board (*id.* at 220-221), and, second, that a trial was required to determine whether the alleged restraint (a) was within the labor exemption of the Sherman Act, (b) constituted an unreasonable regulation of trade, (c) affected interstate commerce, (d) injured Jewel, and (e) was within the com-

petence of Jewel to assert because not *in pari delicto* (*id.* at 221-224).

At trial, upon conclusion of Jewel's case, the District Court dismissed the complaint against Associated and Bromann for want of any evidence of conspiracy (R. 683-684, 658). Based on the view that "Jewel has sought relief from the defendant Unions apart from the theory of conspiracy," the District Court did not grant their contemporaneous motion to dismiss (R. 684, 662). At the conclusion of the whole case, "on the basis of the entire record" (R. 662), the District Court dismissed the complaint against the unions and their officers and representatives, holding that "the purport, history, and effect of the controverted provision indicates that it is within the labor exemption of the Sherman Act, . . . and that it imposed no 'unreasonable' restraint on trade" (R. 678). In addition, as part of its rationale that the regulation of market operating hours was reasonable, the District Court found that the evidence did not "in any way establish that less meat is consumed in this area, in proportion to population and income, because of the restriction, than in areas where fresh meat is sold at night. In fact, the objective statistics indicated that the restriction had no discernible effect" (R. 676). The District Court did not explicitly relate this finding to the unions' position that the limitation was outside the purview of the Sherman Act because it did not adversely affect the interstate inflow of meat into the Chicago area market. The District Court expressly withheld decision upon two issues, stating that since "there is no violation of the Sherman Act the court need not consider whether plaintiff sustained any injury to its business, or whether it was in *in pari delicto* with the defendant unions" (R. 678).

The Court of Appeals reversed. It did not disturb any findings of fact, noting that "there are no factual disputes revealed by the evidence," and "no question as to

the credibility of any witnesses on any issue which we consider relevant . . ." (R. 693). It held that the determination of market operating hours was an inherent management function to be exercised exclusively by the proprietor, and that a collective bargaining agreement on the subject established, without more, forbidden concert among labor and non-labor groups in violation of the antitrust laws (R. 693-695, 696-698). It further held that the limitation was outside the rule of reason because it did not promote competition (R. 695). In addition, without any particularization of reasons, the Court of Appeals held that Jewel "has been injured in its business and property," and that the limitation exerted an "unlawful restraint on interstate commerce" (R. 696). It held, finally, that strike authorization voted by the union members, regardless of any other circumstances, established that Jewel was not *in pari delicto* (R. 696). In the case of Associated and Bromann, the Court of Appeals reversed and remanded "for such further proceedings as may be consistent with this opinion"; in the case of the unions and their officers and representatives, the Court of Appeals reversed and remanded with directions "to enter a declaratory judgment and an injunction substantially as prayed in the complaint herein and to ascertain and award to plaintiff such monetary relief as may be appropriate under this court's opinion" (R. 697-698).

**II. THE SERVICE AND SELF-SERVICE METHODS OF VENDING MEAT; CERTAIN PROVISIONS OF THE AGREEMENTS PERTAINING TO IT; AND THE COMPOSITION OF EMPLOYERS ENGAGED IN VENDING MEAT WITHIN THE CHICAGO AREA.**

Consideration of the controversy will be facilitated by a preliminary statement of the service and self-service methods of vending meat, certain provisions of the collective bargaining agreements pertaining to it, and the composition of employers engaged in vending meat within the Chicago area.



Fresh meat is sold in a meat department of a retail food store through either the service or the self-service method. In the service method the customer places her order with the butcher who personally waits upon the customer in filling it (R. 459, 366). In the self-service method the butchers cut, trim, weigh and package the meat; place a label on the package showing the kind, weight and price of the cut; and put the packaged retail cut into a refrigerated counter from which the customer makes her selection (R. 551, 117-118). The personal service given to a customer in a service market is usually provided in a self-service market through the availability of butchers to furnish custom cutting and other personal attention required by the customer (R. 549, 118, 486-488, 489-490). In its own operation of its self-service markets Jewel states as "a must" that there be "a man on the counter at all times . . ." (R. 486); Jewel requires a butcher at the counter "to create . . . a friendly and courteous atmosphere between the meat cutters and the customer"; "to keep the counter straight, perform any services which the customer might request and fill special requests that the customer might want that she can't find in the counter" (R. 487-488).

Corresponding to this difference in vending meat, the employment terms of butchers within the Chicago area are governed by two separate collective bargaining agreements, one known as a "Service Contract" and applicable to "Service Meat Markets," the other known as a "Self-Service Contract" and applicable to "Self-Service Meat Markets" (R. 142, 17x, 18x).<sup>2</sup> The differentiation into service and self-service contracts began with the agreements for the term beginning December 1, 1952 (cf. R. 144x, 149x with R. 140x), and signalled the advent into the Chi-

<sup>2</sup> This is true except for Local 189, which executes a separate and varying agreement to meet conditions peculiar to it (R. 142, 352-353, 410-411).

chicago area of the self-service method of vending meat late in 1952 (R. 564, 157). Each contract identically defines the distinction between a service and a self-service market (R. 17x, 18x, § 1.2(d)). "A self-service market is one in which fresh beef, veal, lamb, mutton or pork are available for sale on a pre-package self-service basis" (*ibid.*). So long as any fresh meat is sold on that basis the market is classified as self-service; the market is given that classification "even though there is also a service counter offering custom cutting for those who prefer it" (*ibid.*). *The choice whether to use the service or self-service method of vending meat is committed exclusively to the employer's decision;* the service and self-service contracts both explicitly stipulate that "the Employer shall have the sole discretion of determining from time to time which system of merchandising, service or self-service, shall be utilized in each of the Employer's markets; provided that the Employer shall comply with the wages, hours and other contractual conditions of employment pertaining to the system of merchandising used in that market" (R. 17x, 18x, § 1.1).

This freedom to choose the method of merchandising preferred by the particular employer is reflected in the highly variegated and shifting composition of meat markets actually in operation. During the same approximate period in 1957 and 1962, within the Chicago area, food stores vending meat operated the following number of service and self-service markets and employed the designated number of butchers in each type of market (R. 34x):

Employer	As Of	Self-Service Markets	Employees	Service Markets	Employees	As Of	Self-Service Markets	Employees	Service Markets	Employees
Jewel Tea	12/28/57	157	1,192	25	86	12/20/61	206	1,318	15	50
National Tea Co.	9/27/57	115	*	121	*	1/2/62	162	766	22	45
Great Atlantic & Pacific Tea Co.	9/2/57	90	**	54	***	1/2/62	117	570	28	73
High-Low Foods, Inc.	9/2/57	11	100	27	116	1/2/62	26	230	27	116
Wieboldt Stores, Inc.	10/12/57	2	14	5	35	1/6/62	5	35	2	12
Eagle Food Centers, Inc. (Including Eagle and Piggly Wiggly Stores)	9/2/57	1	8	0	0	1/2/62	13	42	0	0
Sure Save Food Market	9/2/58	4	22	2	4	1/2/62	9	47	1	3
Fair Store	9/2/57	0	0	1	4	1/2/62	0	0	1	2
The Kroger Co.	9/2/57	39	169	28	60	1/2/62	45	203	..2	6

\* 518 employees employed in both service & self-service markets without a breakdown between them.

\*\* 90 head meat cutters; figures not available for journeymen and apprentices.

\*\*\* 54 head meat cutters; figures not available for journeymen and apprentices.

Still other food stores vending meat within the Chicago area operated the following number of service and self-service markets in 1957 and at the time of trial (R. 446-447, 606-608):

Employer	1957		At Time of Trial	
	Self-Service Market	Service Market	Self-Service Market	Service Market
Del Farm Stores	11	1	Sold Stores to National Tea in 1958	
Hillman	7	3	12	1
Goldblatt	0	9	Discontinued operation of meat departments.	
Save-Way	1	0	2	0
Pick and Save	7	0	10	0
Mayflower	1	0	2	0

In 1961, the number of Associated's members who authorized its secretary and treasurer Bromann to sign on their behalf the collective bargaining agreements reached that year with the unions was 313 (R. 599). The same mixed character of merchandising exists among the food store operators who are members of Associated as among nonmembers. Associated includes among its members those who operate a single food store and those who operate more than one store (R. 608-609). Of those who operate a single store, some operate the meat department in that store on a self-service basis and others on a service basis (R. 608). Of those who operate multiple stores, some operate all the meat departments in the stores on a self-service basis, others operate some of the meat departments on a self-service basis and others on a service basis, and still others operate all the meat departments on a service basis (R. 608-609). For example, all being members of Associated, Sure Save in 1961 operated ten self-service markets and one service market (R. 413-415), Save Way in 1962 operated two self-service markets (R. 607), Pick and Save in 1962 operated ten self-service markets (R. 607-608), and Mayflower in 1962 operated two self-service markets (R. 608).

### III. THE TERMS OF THE 1961-1964 AGREEMENTS PERTAINING TO RECOGNITION, WORK JURISDICTION, WORKING HOURS, AND MARKET OPERATING HOURS.

The term of the most recent service and self-service contracts runs from October 8, 1961 to October 3, 1964 (R. 17x, 18x, § 10.1). Under each contract the employer recognizes the union as the exclusive bargaining representative "of all employees in the meat department of said Employer who process, pack, wrap, handle and sell frozen and fresh meats on Employer's premises . . ." (R. 17x, 18x, § 2.1). With minor exceptions both contracts require that the work entailed in the preparation and sale of meat shall be performed exclusively by the meat department employees represented by the unions (R. 18x, §§ 2.2, 2.3, R. 17x, § 2.2). The work of a butcher in a self-service meat market includes replenishing and rearranging the stock in the counters and cleaning the counters (R. 578):

Both contracts provide that "eight (8) hours shall constitute the basic workday which shall be scheduled to begin no earlier than 8:00 a.m. and to end no later than 6:00 p.m.", with one hour "allowed for lunch . . . to begin no earlier than 11:00 a.m. and to end no later than 2:00 p.m." (R. 17x, 18x, § 4.1). Each also provides that "At the Employer's discretion overtime at overtime rates may be worked after eight (8) hours in any one day and behind locked doors after 6:00 p.m." (R. 17x, 18x, § 4.4). Performance of overtime after 6:00 p.m. is "relatively rare" (R. 550); there is "Practically none" (R. 601).<sup>3</sup>

Corresponding to this limitation on working hours, both contracts provide that "Market operating hours shall be

<sup>3</sup> Performance of overtime "behind locked doors after 6:00 p.m." is occasioned by such situations as the need in some stores to cut meat the night before in order to deliver early morning orders, advance preparation to meet the requirements of a special sale or of a heavy day preceding a holiday, or to refrigerate a late arrival of a load of meat (R. 549-550, 601).



9:00 a.m. to 6:00 p.m. Monday through Saturday, inclusive. No customer shall be served who comes into the market before or after the hours set forth above . . . " (R. 17x, 18x, § 5.1). Sale of certain products after 6:00 p.m. other than fresh beef, veal, lamb, mutton or pork is authorized (R. 18x, § 5.2, R. 17x, § 2.2).<sup>4</sup> The agreement to which Local 189 is a party provides for the same limitation upon market operating hours from 9:00 a.m. to 6:00 p.m., Monday through Saturday, in group 1, but establishes no limitation upon market operating hours in other groups (R. 142, 349, 87-88).

At Jewel's instance (R. 388), in accordance with its consistent policy (R. 387-388, 401), the self-service contract provides "that in the event the market operating hours of service markets are extended at any time during the term hereof, the extension shall likewise apply to the market operating hours of self-service markets" (R. 18x, § 5.1). It also provides that (R. 18x, § 8.6):

The Union agrees that during the term of this Agreement it will not enter into a contract with any other employer which grants to such other employer the

<sup>4</sup> The excepted products are: "(1) Sliced packaged bacon and Canadian bacon, canned and glassed meats of all kinds, and all meats not for human consumption (being those products excepted from the Union's jurisdiction over sale); (2) All delicatessen meats including: (a) Ready to eat prepared meats, poultry and fish; (b) Sliced boiled, baked or barbecued ham; (c) Sliced packaged dried beef; (d) Smoked sausage; (e) Fresh pork sausage; (3) Frozen fresh poultry, cut-up or whole; (4) Fresh poultry, cut-up or whole, processed on the premises; (5) Frozen packaged fish; (6) Smoked butts, smoked ribs and smoked hocks; (7) Frozen specialty meat items such as frozen and formed (flaked or chopped) patties and choppettes, with or without butter or vegetable, breaded or unbreaded." Sale of these products after 6:00 p.m. from self-service cases is authorized upon the condition that they be stocked in the cases by meat department employees before 6:00 p.m. and not be stocked or handled by any employees after that hour (R. 18x, § 2.2, 2.3, R. 17x, § 2.2).

right to operate self-service markets for lesser wages or longer hours or any other condition of employment or market operation more favorable to such other employer than those contained in this Contract except upon the condition that this Employer shall receive the benefit of any more favorable terms granted to such other employer.

Each provision originated in this identical form with the negotiation of the first self-service contract in 1952 (R. 145x, 148x, arts. IV, XIX). Each provision had been drafted by Jewel for inclusion in the 1952 agreement (R. 388). It has been Jewel's position throughout that no employer should have more favorable terms than any other employer (R. 387-388, 401).

#### **IV. REGULATION OF MARKET OPERATING HOURS BY COLLECTIVE BARGAINING AGREEMENT IN AREAS OTHER THAN CHICAGO.**

Regulation of market operating hours by collective bargaining agreements is not confined to the Chicago area, but exists elsewhere throughout the country, covering territories with a population of 3,717,208 (Appendix B, *infra*, pp. 127-130). Included are the major metropolitan areas of Cleveland, Seattle, and St. Paul (*infra*, pp. 127-129, 130). In Cleveland, the closing hour of 6:00 p.m., which has existed at least since 1945, applies to the entire store, and not to the meat department alone (*infra*, p. 127).

#### **V. THE HISTORY OF THE CONTRACTUAL LIMITATION OF MARKETING AND WORKING HOURS IN THE CHICAGO AREA; AND ITS APPLICATION TO JEWEL THROUGHOUT THE LATTER'S OPERATION OF MEAT MARKETS IN THAT AREA.**

Local 546 was formed in 1914 (R. 443). Its territorial jurisdiction—Chicago and environs—was about the same then as now (R. 443-444). In Chicago in 1910 the operating hours of a meat market were 7:00 a.m. to 7:00 p.m., Monday through Friday, 7:00 a.m. to 10:00 p.m., on

Saturday, and 7:00 a.m. to 1:00 p.m., on Sunday (R. 443). The butcher worked the full 81-hours, 7-days per week that the market was open for operation (*ibid.*). These hours continued until November 1919 (*ibid.*).

On November 1, 1919, Local 546 called a strike of the meat cutters in Chicago (R. 444). The objective of the strike was "more money and less hours" (*ibid.*). The Union "wanted to cut off an hour in the morning and an hour at night, and no Sunday hours", with the result that the hours would be 8:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. to 9:00 p.m., on Saturday (R. 445).

The strike lasted eight days (R. 445). At its conclusion the operating hours of meat markets in Chicago were established at 8:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. to 9:00 p.m. on Saturday (*ibid.*). The standard collective bargaining agreement entered into by Local 546, for the term of November 1, 1920 to October 31, 1921, "governing Meat Cutters in Retail Meat Markets in the City of Chicago, Illinois, and Suburbs," provided in part that (R. 115x, 576):

Article 1. Nine hours shall constitute the basic working day, hours shall be 8 A.M. to 6 P.M. excepting Saturdays and days preceding holidays beginning at 8 A.M. and quitting at 9 P.M., allowing one hour for dinner and one-half hour for supper. Employees must be dressed and ready for work at 8 A.M.

Article 2. *It is expressly understood that no customers will be served who come into the market after 6 P.M. and 9 P.M. on Saturdays and on days preceding holidays, that all customers in the shop at the closing hour be served, that all meats be properly taken care of and markets placed in a sanitary condition, such work not to be construed as overtime. Overtime to be limited to one hour every day and shall be performed behind locked doors at the rate of \$1.50 per hour. Employees are required to notify the Secretary of Local 546 of such overtime. [Emphasis supplied.]*

Article 3, There shall be no work on Sundays, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day or New Year's Day.

The hours established by the 1919 strike continued until 1937 when they were reduced (R. 445). In 1937, by agreement, marketing and working hours were set at 8:30 a.m. to 6:00 p.m., Monday through Friday, and 8:30 a.m. to 7:00 p.m., on Saturday (R. 116x, arts. 1, 5). A further reduction took place in 1941. The marketing and working hours were in that year by agreement established at 8:30 a.m. to 6:00 p.m., Monday through Saturday, thus eliminating the longer Saturday (R. 117x, arts. 1, 5). Another reduction occurred in 1945. In that year, by agreement, marketing and working hours were set at 8:30 a.m. to 6:00 p.m. Monday through Friday, and 8:30 a.m. to 3:00 p.m. on Saturday (R. 121x, 122x, arts. III, VII). A further reduction was effected the next year. In 1946, by agreement, marketing and working hours were fixed at 9:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. to 1:00 p.m. on Saturday (R. 124x, 125x, arts. III, VII). In 1947, the short day on Saturday was discontinued, and the ending time for marketing and working was by agreement set at 6:00 p.m., Monday through Saturday (R. 128x, 129x, arts. III(c), VII(a)). The hours thus established in 1947 continue to the present (R. 132x, 133x, 136x, 137x, 140x, 141x, 149x, 150x, arts. III(c), VII(a); R. 145x, 153x, 154x, arts. III(a), IV; R. 163x, 168x, 35, 37, 49, 51, 7x, 8x, 13x, 14x, arts. 4(1) 5).

The history of hours regulation set forth in the preceding paragraph is taken from the agreements of Local 546. At least since 1931, the agreements of all the other unions, including only group 1 of Local 189, contained provisions which set market operating hours that were identical with those established by the Local 546 agreements (R. 575, 610).

From the inception in 1933 or 1934 of Jewel's operation of meat markets within the Chicago area, Jewel has

entered into collective bargaining agreements with the unions covering its meat markets; these agreements set the market operating hours to prevail in Jewel's meat departments; these market operating hours were identical with those set by the agreements entered into by the other employers in the Chicago area; and Jewel has throughout operated its meat departments in conformity with the marketing hours established by the agreements (R. 578, 315-316).

#### **VI. THE METHOD OF JOINT BARGAINING BETWEEN THE UNION GROUP AND THE EMPLOYER GROUP IN THE CHICAGO AREA.**

The embedment of the subject of market operating hours in wages, hours, and working conditions is shown in significant part by the negotiations pertaining to it in 1957, 1959, and 1961. An understanding of the negotiations will be facilitated, and their arm's-length character revealed, by a preliminary statement of the method of bargaining which prevails in the Chicago area.

In preparation for negotiations, at group meetings of the staffs of the unions, a survey form is prepared which is used by the union business agents, in the course of their frequent visits to the meat markets, to ascertain the wishes of the members on the subject of contract terms. Each union then prepares a list of contract demands. At an ensuing group meeting of the seven unions the seven separate demands are reduced to one final set of contract proposals. (R. 593-594.) In the bargaining which follows the unions are represented by a negotiating committee composed of 17 to 23 representatives (R. 575). R. Emmett Kelly, secretary-treasurer of Local 546, is chairman of the unions' negotiating committee and speaks for it (R. 89, 143, 355, 407-408). From time to time in the course of bargaining the union group will caucus to determine the position it should take in negotiations (R. 409, 139-140). And during negotiations the unions ascertain



the wishes of the members by the visits of the business agents to the meat markets and at the regular union meetings (R. 594).

Bargaining commences with a call of a meeting of the employers by R. Emmett Kelly at which the unions' contract demands are presented. (R. 408). A further meeting is then scheduled at which to begin to negotiate the demands (*ibid.*). In advance of negotiations the employers meet among themselves to explore the objectives they seek in negotiations (R. 409). They designate a chairman to speak for them; in meeting with the unions, unless an employer is absent from the meeting or specifically disclaims the position taken, the employer chairman speaks for the entire employer group (R. 408-409, 368, 517-518, 524-525). The employer chairman may change from meeting to meeting, as in the 1957 negotiations, or a single employer chairman may act for the duration of the negotiations, as in the 1959 and 1961 negotiations (R. 367-368, 408-409, 139). In the course of negotiations the employers caucus from time to time to determine the position the employer group should take (R. 409, 139-140).

When agreement is reached between the employer group and the union group, its terms are presented to the members of the unions for approval at a contract ratification meeting held by each union (R. 409-410, 593). These meetings are customarily held on Sunday to assure maximum attendance (R. 593). In preparation for the meetings R. Emmett Kelly prepares an outline of the proposals and counterproposals made in the course of the negotiations for his use at the Local 546 meeting and for the use of the other representatives at the meetings of the other unions (R. 588-589, 590, 598). At the Local 546 meeting the negotiations in their entirety are reviewed with the members prior to submission to a vote (R. 589). As the largest of the unions, and in order that the other unions may be guided by developments at the Local 546 meeting, the

contract ratification meeting of Local 546 is begun one-half earlier than the other ratification meetings, and the other unions are apprised by telephone of the progress of the Local 546 meeting (R. 591).

After ratification by the members, a committee of the employer group and the union group meets to draft the precise language to reflect the understanding reached (R. 410). When a draft in final form is adopted it is set up in galley proof; further corrections are made and the agreement is reduced to final printed form (*ibid.*). The employers and unions then sign separate but identical agreements (*ibid.*).<sup>5</sup>

As a method of bargaining joint negotiation between an employer group and a union group was first instituted in 1941 (R. 573-574). Joint negotiation was adopted in order to strengthen the bargaining position of the unions (R. 574-575). Before 1941, as the largest of the unions, Local 546 did the bargaining, and whatever resulted from its negotiations was generally passed on to the other smaller locals (R. 574, 610). In the process some of the smaller local unions had fallen behind in wages and other conditions of employment (R. 575, 610). It was decided that the best way to bring the lagging locals to the same level was by group bargaining (R. 575).

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<sup>5</sup> This procedure prevails as to all the unions except Local 189. Local 189 participates in the joint negotiations together with the other unions (R. 352-353). However, because of varying problems unique to Local 189, while some elements of the Local 189 agreement are concluded as part of the principal negotiations, the employers seek to defer negotiations with Local 189 until the end of negotiations with the other unions (R. 353, Tr. 1079). An agreement with Local 189 is usually reached within thirty days of the completion of negotiations with the other unions (R. 410-411).

## **VII. THE 1957, 1959, AND 1961 NEGOTIATIONS AS THEY RELATE TO THE SUBJECT OF MARKET OPERATING HOURS**

We now set forth a statement in detail of the negotiations in 1957, 1959, and 1961 as they relate to the subject of market operating hours.

### **A. The 1957 Negotiations**

1. On July 25, 1957, the unions gave notice of their desire to negotiate new contract terms. On August 8, the unions scheduled a meeting for August 20 to submit the unions' proposals. At the meeting on August 20 the unions presented and explained their demands to the employers. (R. 353-354, 35x-39x.)

2. E. T. Vorbeck is Jewel's principal labor negotiator (R. 342). On August 29, a meeting was held at his offices attended by him and representatives of Kroger, A & P, National Tea, and Hillman (R. 355-356). Six employer needs were formulated at that meeting to be sought in negotiations: (a) night openings, (b) female wrappers, (c) wholly automatic wrapping machines, (d) a flexible work day, (e) the right to preprice off the premises, and (f) the right to sell fresh frozen meats (R. 356). These may be explained as follows:

(a) *Night openings*: The objective sought is removal or modification of the limitation upon market operating hours (R. 40x).

(b) *Female wrappers*: The objective sought is the creation of a new job classification to be filled by women whose work would be to package the meat after it had been cut and trimmed by the butchers. This is work presently performed by meat cutters. The wage to be paid to the female wrapper would be less than that of an apprentice meat cutter and the female wrapper would not progress to a higher classification. (R. 356-357.)

(c) *Wholly automatic wrapping machines*: The objective sought is authorization to use a machine that com-

pletes the wrap from beginning to end without the intervention of human hands (R. 357). This objective was attained in a later negotiation (R. 358).

(d) *Flexible work day:* This objective has its principal importance in relation to the extension of market operating hours to 9:00 p.m. The flexible work day would authorize the employer to schedule the meat cutter to begin to work his basic eight-hour day at any time during the morning hours of the day as late as noon. Thus, if the market were open from 9:00 a.m. to 9:00 p.m., the meat cutter could be scheduled to work from noon to 9:00 p.m., and unless premium pay were negotiated for work after 6:00 p.m. as such, he would receive the same wage as the employee scheduled to work from 9:00 a.m. to 6:00 p.m. (R. 358-361.)

(e) *Pre-pricing off the premises:* The pricing of meat products prepackaged by the packer is presently performed by the meat department employees. The objective sought is to have the packer's employees, rather than the meat department employees, price these products. (R. 360.)

(f) *Sale of frozen fresh meats:* The contract authorizes the sale of frozen fresh meat provided that the freezing is done by the meat department employees on the premises. The objective sought is to authorize the sale of frozen fresh meats prepared off the premises by the packer using his own freezing facilities and employees. (R. 360-361.)

3. On August 30, following the August 29 meeting at which the six employer needs were formulated, E. T. Vorbeck wrote Carl H. Bromann, secretary and treasurer of Associated (R. 366-367). Vorbeck expressed his opinion that "you will find the chains' interests substantially what they have been in the past. In other words, we will continue to press for the removal of all restrictions on our operations, which of course means night opening, the right to use female wrappers and fully automatic

wrapping machines, the flexible work day, the right to have products prepriced off the premises, and the right to sell frozen fresh meats." He expressed his "sincere hope that the independents which you and your affiliated associations represent can unite with the chains in endeavoring to secure most or all of these objectives." He concluded that he expected to see Bromann on the morning of September 5 "at which time all employers are scheduled to meet to determine the positions they will take at the afternoon's negotiations." (R. 41x.)

A "very able negotiator," Bromann is "acceptable" to the employer group as its chairman (R. 412). In the 1950's Bromann acted as chairman of the employer group for the entire period of the negotiations (R. 575-576).

4. A meeting of the employer group and the union group was held on September 5 (R. 362). The employers present were Jewel, National Tea, Hillman, High-Low, Kroger, A&P, Piggly Wiggly, Goldblatt, Wieboldt, Save-Way, Del Farm, Associated Food Retailers, Fair, Sure Save, and IGA (R. 362-363). Substantially the same group of employers continued to meet with the unions throughout the 1957 negotiations (R. 363). At a caucus of the employer group on that day Jewel expressed its willingness to reduce market operation on Saturday afternoon by three hours in exchange for a three-hour increase of market operation on Friday night (R. 369).

5. On September 9, High-Low telephoned Jewel to state that it was interested in one night of operation but no more (R. 369).

6. A meeting of the employer group and the union group was held on September 11 (R. 369).

(a) On that day Jewel was of the view that there were three courses of action open to it to secure night operation (*ibid.*). The first was to pay a wage differential, either in the form of a higher weekly wage rate or an



overtime premium, in any store open at night (R. 369-370). The thought was to pay more money to induce people to work at night (R. 370). The second course of action was to increase the total wage offer to the unions to the point that they could not refuse (R. 369-370). The thought was to offer a wage so high that the unions would endeavor "to sell" night operation to their members (R. 370). The third course of action was to litigate if negotiation of night operations was unsuccessful (R. 370, 371).

(b) At a caucus of the employer group on that day Goldblatt and Fair stated they were not interested in night openings, while Wieboldt expressed an interest in Friday night operation (R. 561). Although not expressed at that particular caucus, Kroger was not then or now too favorably inclined towards night operation, basing its position on the "cost factor" of how much it would "have to pay for the hours after 6:00 p.m." (R. 365-366). The cost of night operation includes the cost of paying butchers to work at night (R. 366). In the course of negotiations the cost of labor for night operation was an important consideration in the positions taken by the employers (*ibid.*).

(c) The employer group, except Associated, made a proposal to the union group which retained the present service and self-service contracts with the following changes (R. 371-372):

One, a term of two years.

Two, one night of operation per week on Friday night.

Three, flexible work day.

Four, a female wrapper classification.

Five, remove the restrictions on automatic wrapping equipment.

Six, wage increases for journeymen of \$4 the first year, and \$3 the second, with appropriate smaller increases for apprentices.

Seven, right to have delicatessen items pre-priced off the premises.

Eight, right to sell all types of frozen fresh meat processed off the premises.

Nine, the right to supplement industry demands at any time.

Ten, to insert the following provision in the contract:

"This agreement shall be binding on the employer herein and its successors and assigns."

Eleven, the offer was made applicable to all Locals except 189, with the further clarification that those employers who have 189 contracts wish to discuss 189 as a separate issue.

Associated informed the employer group that it would present its proposal to the unions at a later meeting with R. Emmett Kelly and would report to the employer group the proposal it would make (R. 373). On September 13, pursuant to prearrangement, Associated informed Jewel in detail of the offer it had made to the unions the afternoon before (R. 372-373). At the ensuing meeting of the employer and union groups on September 15, Associated reported to the entire employer group the offer it had made (R. 373).

7. A meeting of the employer group and the union group took place on September 15, 1957 (R. 373). At that meeting the employer group, except Associated, made a proposal of which item 2 provided that market operating hours should be at the discretion of the employer subject only to the qualification that there shall be no market operation on Sundays or holidays (R. 373-374). R. Emmett Kelly told a subcommittee of employers that Friday night could be had for enough money (R. 374).

8. Meetings of the employer group and the union group were held on September 26 and October 2 and 16 (R. 374-375). At the time of the October 2 meeting Jewel was in the process of working up a proposal providing for market operating hours from 9:00 a.m. to 6:00 p.m., Monday through Thursday and on Saturday, 9:00 a.m. to 9:00 p.m. on Friday, and Sunday closed (*ibid.*).

9. A meeting of the employer group and the union group was held on October 22 (R. 375).

(a) At a caucus of the employer group on that day Jewel was informed that the employer group proposed to make an offer to the union group which retained the existing market operating hours provision unchanged (R. 375-376). At this point Jewel stood alone among the employer group in seeking a change (R. 376). Vorbeck for Jewel informed the employer group that if the limitation upon market operating hours was not lifted or modified acceptably to it Jewel would litigate the question (R. 376-377). He read to the group a letter from its legal counsel expressing the opinion that the limitation upon market operating hours, "insisted upon by Amalgamated Meat Cutters, Local No. 546, and Associated Food Retailers of Greater Chicago," violated the antitrust laws (R. 377, 379). Vorbeck had in part requested the preparation of this legal opinion in order to use it in negotiations (R. 377-378). Vorbeck also stated that on October 11 he had visited Bromann of Associated at his office to give him a copy of this legal opinion, to inform him that the question of marketing hours would be litigated by Jewel if not satisfactorily negotiated, and that Bromann and Associated would undoubtedly be named as co-defendants (R. 376-377, 378). Vorbeck told the employer group, at this caucus and at ensuing meetings, that any employer who opposed Jewel's position on marketing hours could be named as a co-conspirator in a suit (R. 379-380).

(b) At the meeting of the employer and union groups after the caucus, the employer group made its proposal to

the union group retaining the existing market operating hours provision unchanged (R. 375-376, 378). Vorbeck stated that Jewel was in basic agreement with the proposal except for its retention of the limitation on marketing hours (R. 379). He expressed his belief that this limitation was invalid and read the legal opinion he had received (*ibid.*). He stated that: "We would much prefer to negotiate for one or more nights of operation and would abide by the results of such negotiations if they were satisfactory to us. But if they were not, we felt impelled to litigate the matter even though our successful outcome of such litigation would inevitably mean that the market operations would automatically be opened to seven days a week, twenty-four hours per day, of operation" (R. 379, 572-573). As stated by R. Emmett Kelly to the members at the ensuing Local 546 contract ratification meeting, this was "negotiating with a gun in your back" (R. 120).

(c) Vorbeck then met separately with R. Emmett Kelly and other union representatives (R. 380). Kelly inquired what wage increase over and above the industry proposal Jewel had in mind to obtain agreement on night operation (R. 380). Vorbeck mentioned a wage increase which was "somewhat more" than the industry proposal but which was also contingent on obtaining agreement upon female wrappers (R. 381). In response to the question whether the same wage offer would be made if female wrappers were eliminated, Vorbeck stated that he doubted it very much and that the unions would find that many other employers would fall away from the industry proposal if female wrappers were eliminated (R. 382). In answer to the inquiry as to the premium for work at night that Jewel would be willing to pay, Vorbeck replied that it would be 25 cents per hour in conjunction with an entirely flexible work day (R. 382-383). This would mean that an employee scheduled to work from noon until 9:00 p.m. would receive 75 cents extra for the three hours of work after 6:00 p.m.

(R. 383). A guarantee of the number of employees who would work at night was also discussed (R. 382).

10. A meeting of the employer group and the union group was held on November 1 (R. 383).

(a) Prior to the meeting of the employer and union groups, Vorbeck met on November 1 with Kelly at the latter's office and made a proposal on behalf of Jewel alone (R. 383). Among the terms of the proposal were the following (R. 383-386, 44x):

1. Nights of operation—Five, Monday through Friday; journeymen on duty Thursday and Friday; first employee called on other nights must be a journeyman.
2. The workday to be changed to an eight (8) hour flexible workday to be worked between the hours of 8:00 a.m. to 9:00 p.m., Monday through Friday, and 8:00 a.m. to 6:00 p.m., on Saturday. No work on Sundays and holidays.
3. All requirements for payment of time and one half for work before 9:00 a.m. and after 6:00 p.m. to be eliminated and the following substituted: "Night work premium in the amount of 25¢ per hour shall be payable for all hours worked after 6:00 P.M. up to 6:00 A.M."
4. Female wrappers.

The wage scales proposed by Jewel were to apply to any market open for the sale of fresh meat after 6:00 p.m. (R. 384). Jewel had no objection were the unions to enter into a settlement with the rest of the industry at a lesser wage scale but without night operations (R. 385, 386). But Jewel was insistent that no more favorable terms be granted to any other employer for night operation unless the same terms were granted to Jewel (R. 385, 387-388).

(b) Subsequent to the meeting of the employer and union groups, Vorbeck again met separately with Kelly in order



to learn what would make Jewel's offer more acceptable to the unions (R. 389-390). Kelly stated that the proposals for female wrappers and a 25 cents per hour premium for night work were unlivable (R. 390, 655-656).

(c) Towards the close of the meeting of the employers and unions, Bromann of Associated informed Vorbeck that if all the employers could agree upon one night of operation he would endeavor to induce his group to go along with such a proposition (R. 390). Vorbeck stated that any offer that Associated might make for one night of operation would be given serious consideration (*ibid.*).

11. A meeting of the employer group and the union group was held on November 12 (R. 390).

(a) At a discussion among the employer group on that day IGA suggested a comprehensive proposal, not presented to the union group, which included night operation on Thursday and Friday, 9:00 a.m. to 9:00 p.m., except that night opening would be on Tuesday if a holiday fell on Thursday; on all other days marketing hours would be 9:00 a.m. to 6:00 p.m., with no operations on Sundays and holidays (R. 390-391). IGA is an independent cooperative buying group which represented sixty stores in the negotiations; the meat departments in these stores were operated on a service basis in the main (R. 578-579).

(b) The proposal discussed on that day among the employers which was presented to the union group was prepared by National Tea (R. 391). Originally prepared on behalf of all industry except Jewel, the proposal was joined by Jewel after discussion among the employer group (R. 391, 47x, 171x). The proposal was ultimately made to the union group on behalf of all employers except Associated, Bromann for Associated stating that he would present the proposal to his group on November 14 and report Associated's position to the other employers on November 15

(R. 391-392, 579-580, 47x, 171x). Among the terms of the proposal were the following (R. 392-395, 579-581, 47x-48x, 171x-172x):

2. *Night operation*: Friday night meat department operation effective December 2, 1957. Male employee to be on duty during market operation.

4. *Female Wrappers*:

- (b) *Duties*: Wrapping (including boarding and tray-ing), sealing, scaling, pricing, labeling, displaying and slicing of luncheon meats.

6. *Work Day; Luncheon Period*:

- (a) Effective December 2, 1957, the work day to be changed to an 8-hour day to be worked between the hours of:

1. 8:00 A.M. to 6:00 P.M. on Monday, Tuesday, Wednesday, Thursday, and Saturday.

2. 8:00 A.M. to 9:00 P.M. on Friday.

7. *Overtime or Premium Pay*: Effective December 2, 1957, all contract provisions requiring the payment of time and one-half after 6:00 P.M. and before 9:00 A.M. to be eliminated and the following provision substituted therefor:

- (a) Night premium in the amount of 25¢ per hour shall be payable for all hours worked after 6:00 P.M. up to 6:00 A.M.

12. A meeting of the employer group and the union group was held on November 15 (R. 396).

(a) At this meeting the employer group, including Associated, presented a proposal to the union group (R. 396-398, 581, 51x, 174x). Associated joined all other employers in presenting this proposal (R. 396-397, 568, 582, 51x, 174x). Among the terms of the proposal were the following (R. 396-399, 581-584, 51x-52x, 174x-175x):

2. *Night Operation*: Friday night meat department operation, effective October 6, 1958. Male employee to be on duty during market operation.

#### 4. Female Wrappers:

- (b) *Duties:* Wrapping (including boarding and traying), sealing, scaling, pricing, labeling, and displaying, and slicing of luncheon meats.

#### 6. Work Day, Luncheon Period:

- (a) Effective December 2, 1957, the work day to be changed to an 8 hour work day to be worked between the hours of:

1. 8:00 A.M. to 6:00 P.M. on Monday through Saturday.
2. 8:00 A.M. to 9:00 P.M. on Friday, effective October 6, 1958.

#### 7. Overtime or Premium Pay: Effective December 2, 1957, all contract provisions requiring the payment of time and one-half before 9:00 A.M. to be eliminated and the following provision substituted therefor:

- (c) Effective October 6, 1958, night premium in the amount of 25¢ per hour shall be payable for all hours worked after 6:00 P.M. up to 6:00 A.M.

(b) Prior to the submission of this proposal a subcommittee meeting had been held on that day attended by a group of employers composed of Bromann for Associated and representatives of Sure Save, Del Farm, IGA, and Mayflower (R. 584, 412, 446, 579). They met with R. Emmett Kelly and other union representatives (R. 584). The employers stated that they had the permission of the entire employer group to talk with the union representatives about the operation of meat departments at night (R. 585). The employers sought to prevail upon the union representatives to accept some type of night operation; they advanced their reasons to support this want (*ibid.*). Bromann asked the union representatives to agree to night operation (*ibid.*). The union representatives stated that they would take back the request to the full union negotiating committee and would give the employers a report later in the day (R. 585-586).

(c) Following this subcommittee meeting the employer group, including Associated, presented its proposal for night operation (R. 586). In response to this proposal, the union group outlined a counterproposal which made no provision for night operation, thus in effect rejecting the proposal of the employer group for Friday night operation (R. 399).

13. The final meeting of the employer group and the union group was held on November 20 (R. 400). Jewel, National Tea, Hillman, High-Low, and Piggly Wiggly continued to propose night operation on Friday night (*ibid.*). Kroger, A&P, Goldblatt, IGA, and Del Farm abstained from this proposal (R. 400-401). The union group rejected the Friday night operation proposal (R. 401). The union group presented a comprehensive proposal of its own which did not alter the existing provision pertaining to market operating hours and made no provision for female wrappers (R. 401-402, 53x.). After negotiation of minor variations in it R. Emmett Kelly on behalf of the union group polled the employers present to determine their position on the unions' proposal with the followings results (R. 402, 121-123):

Associated	yes
Del Farm	yes
National Tea	conditional yes
A&P	yes
Kroger	yes
IGA	yes
Goldblatt	yes
Hillman	yes
Sure Save	yes
Wieboldt	if Jewel only one opposed, yes; otherwise, no
Jewel	no

14. Vorbeck for Jewel met with R. Emmett Kelly for the union group at the latter's office on November 22

(R. 404). Vorbeck presented a comprehensive proposal on behalf of Jewel which included provision for one night of operation on Friday night and female wrappers (R. 404-405). Vorbeck requested that this proposal be submitted to a vote of the members at the contract ratification meetings (R. 404-405, 586, 56x-61x). Kelly agreed to present it to the members (*ibid.*). Among the terms of the proposal were the following (R. 404-405, 59x-60x):

4. *Female Wrappers:*

- (b) Duties: Wrapping (including boarding and traying), sealing, scaling, pricing, labeling and displaying, and slicing of luncheon meats.

6. *Hours of Operation:*

- (a) All locals except Local 189: Friday to 9:00 p.m.
- (b) New Group 1 of Local 189: Friday to 9:00 p.m.
- (c) New Group 2 of Local 189: Six permissible to 9:00 p.m.
- (d) Groups 3, 3A and 4 of Local 189: No change in contract.
- (e) No operations on Sundays or holidays.
- (f) A male employee must be on duty at all hours that the market is open for the sale of meats.

If the contract provision prescribing the hours of market operating is not relaxed so as to permit at least one night of operation to 9:00 p.m. in all areas, then the company intends to litigate the legality of this contract restriction. We shall do so with genuine regret.

8. *Workday:* Locals 262, 320, 546, 547, 571 and 638 and Group 1 in Local 189:

- (a) Monday, Tuesday, Wednesday, Thursday and Saturday: 9:00 a.m. to 6:00 p.m.
- (b) Friday: 9:00 a.m. to 6:00 p.m., with the employer to have the option to work male employees after 6:00 p.m. at time and one-half.



15. About 9:30 a.m. on November 23, R. Emmett Kelly received a telephone call from Vorbeck (R. 586). Vorbeck requested that, if the members rejected Jewel's proposal which included both night operations and female wrappers, the same proposal should be submitted to the members with the deletion of night operations but with the retention of female wrappers (R. 586-587). Vorbeck also asked Kelly to telephone him as to the outcome of the contract ratification meetings (R. 491).

16. At 10:30 a.m., November 23, representatives of National Tea met with R. Emmett Kelly at the office of the latter's attorney (R. 587). National Tea stated that it was joining Jewel in Jewel's proposal of November 22 which included provision for female wrappers and night operation (R. 588). National Tea did not join with Jewel in the latter's alternative proposal deleting night operation (*ibid.*). National Tea also stated it would join Jewel in legal action against the unions (*ibid.*).

17. The contract ratification meeting of Local 546 was held on November 24 (R. 588). Upwards of 3,000 members attended (*ibid.*). R. Emmett Kelly reviewed with the members the course of the negotiations in their entirety (R. 589). He read to them the legal opinion presented by Jewel which stated that the limitation upon market operating hours violated the antitrust laws (R. 119). He told the members that Jewel's course of action is what he "would call negotiating with a gun in your back" (R. 120). He informed the members that if they want a contract without night operation, "We will take our chances with court action, and if night operation comes to Chicago, we thank Jewel Tea for it" (*ibid.*). He explained to the members that there were three propositions that they were to vote upon: (a) the industry offer without female wrappers or night operation; (b) the Jewel-National Tea offer which included female wrappers and night operation; and (c) the alternate Jewel offer which

provided for female wrappers but omitted night operation (R. 124-125, 589). Kelly informed the members that the union negotiating committee recommended acceptance of the industry offer without night operation or female wrappers and rejection of the Jewel-National Tea offer and the alternative Jewel offer (R. 125).

The three proposals were put to a vote of the members and resulted in acceptance of the industry offer without night operation or female wrappers and rejection of the Jewel-National Tea offer and the alternative Jewel offer (R. 125, 589). At the conclusion of this stage of the meeting some of the members left (R. 590). Kelly informed the members that a secret strike ballot would now be conducted to secure authorization of a strike against Jewel and National Tea if a strike should be necessary, explaining to the members that he did not anticipate a strike but that it would strengthen the hand of the union negotiating committee to have strike authority (R. 125, 589-590). A secret strike ballot was conducted resulting in a vote of 2,253 in favor of a strike, 98 against, and 7 blank ballots (R. 126, 590).

Contract ratification meetings were held on the same day by the other unions except Local 189, the other meetings starting one-half hour after the commencement of the Local 546 meeting, with telephone communication being maintained between the other union meetings and the Local 546 meeting to apprise the others of the progress of the Local 546 meeting, as is customary (R. 590-591).

18. The representatives of the other unions on the afternoon of November 24 reported by telephone to R. Emmett Kelly the outcome of the votes at the contract ratification meetings held by them (R. 591). In accordance with Vorbeck's previous request, Kelly telephoned him on November 24 to apprise him of the outcome of the meetings (R. 591-592, 406-407, 129). Thereafter, Jewel by letter informed R. Emmett Kelly that Jewel had "decided to

sign under the duress of the strike vote of your membership" (R. 131, 407), and it entered into the agreements that the members had ratified and the other employers had accepted (R. 135, 28-58). About mid-week after the November 24 meeting, Cone of National Tea telephoned R. Emmett Kelly to state that National Tea had decided to accept the agreement to which all other employers had assented, and that, while it had been prepared to take a strike, it would not litigate (R. 594-595, 611-612).

### B. The 1959 Negotiations

1. On June 4, 1959, the unions gave notice of their desire to negotiate new contract terms. The unions thereafter presented their contract demands to the employers. Meetings of the employer group and union group were held on July 21, August 18, 31, September 9, 25, November 2, December 1, 2, 3, 4, and 8. (R. 515-517, 80x-83x.)

2. On August 31, C. T. Van Ausdall, then of Piggly Wiggly, was appointed chairman of the employer group, and he remained in that position for the remainder of the 1959 negotiations (R. 517-518). As chairman, he stated the position of all the employers present at a meeting unless a particular employer disclaimed that position (R. 518).

3. Prior to the meeting on September 25, Vorbeck had prepared a list called "12 restrictions in the contracts and practices of Chicago Meat Cutter Locals" (R. 518-520, 83x). The first item enumerated in the list stated "Restrictions on the hours when a market may be open" (R. 518, 83x.). This list was distributed to the union group at the meeting of September 25 with the objective of securing union concessions on the subjects (R. 518-519). Each employer had in common the hope that the unions would lift at least some of the restrictions, with varying weight accorded by each employer as to which restrictions each wanted lifted (*ibid.*)?

4. At the December 1 meeting R. Emmett Kelly stated that he was willing to discuss market operating hours and to bargain on the subject (R. 520). At the December 2 meeting the employer group, through its chairman, submitted a comprehensive proposal to the union group, including as item 9 the elimination of all restrictions upon market operating hours and providing for a completely flexible work day (R. 520). R. Emmett Kelly responded that he was willing to bargain on the subject of market operating hours (R. 520-521). At the December 3 meeting the employer group made another proposal to the union group of which item 11 called for the removal of all restrictions on market operating hours (R. 521). At the December 4 meeting the employer group presented a proposal to the union group and this proposal contained no request to remove the limitation upon market operating hours (*ibid.*). The 10-point response of the union group to this proposal contained a statement that the union group was willing to bargain on market operating hours (*ibid.*). Final agreement was reached at the meeting of December 8, retaining the existing provision pertaining to market operating hours, with Jewel expressing its reservation as to the validity of this limitation (R. 517, 135-136, 5x-16x.).

5. A contract ratification meeting was held among the members of Local 546 on December 14, 1959, attended by upwards of 3,000 members, at which the course of the negotiations was reviewed in detail with the members, and the members voted to ratify the agreement that had been reached (R. 595, 596). Other contract ratification meetings were conducted by the other local unions at this time (R. 595).

6. In contrast with the 1957 agreements providing that the workday shall begin at 9:00 a.m. and stop at 6:00 p.m. but authorizing the performance of work at overtime rates from 8:00 a.m. to 9:00 a.m., the 1959 agreements provided

that eight hours shall constitute the basic workday to begin no earlier than 8:00 a.m. and to end no later than 6:00 p.m. with no provision for overtime rates for work between 8:00 a.m. and 9:00 a.m. (R. 522, 35, 36, 49, 50, 7x, 13x, 14x, art. 4, §§ 1, 4). The consequence of the change was that, while work under both the 1957 and 1959 agreements was permissible between 8:00 a.m. and 9:00 a.m., the 1959 agreements eliminated the requirement of payment at time and one-half for that early morning work (R. 523). This was a union concession which granted the employer group a limited flexible work day (*ibid.*).

### C. The 1961 Negotiations

1. On July 27, 1961, the union group presented its contract demands to the employer group (R. 523-524, 85x.). A meeting of the employer group and the union group was held on August 22 (R. 524). The preceding day, August 21, a meeting of the employers alone took place (*ibid.*). E. T. Vorbeck of Jewel was selected permanent chairman of the employer group to act for the duration of the 1961 negotiations (*ibid.*). As chairman, he stated the position of all the employers present at a meeting unless a particular employer disclaimed that position (R. 525). A steering committee, composed of six members and six alternates, was selected to guide and assist the chairman (R. 524-525). Bromann of Associated was a member of the steering committee (R. 525). In accordance with the request of the employer group, Vorbeck worked up a revised list of what the employers regarded as undesirable contractual restrictions which again contained objection to the limitation upon market operating hours (R. 525-526).

2. A meeting of the employer group and the union group was held on September 12 (R. 526). The employer group submitted a contract proposal to the union group (R. 527, 528-529, 90x.). This proposal had been drafted by Vorbeck; members of the steering committee had



discussed, revised, and put the draft into a form satisfactory to the employer group for presentation to the union group; and Bromann of Associated concurred in the submission of the proposal to the union group (R. 526-529). The proposal contained no limitation upon market operating hours and thus committed this subject to the discretion of the employer (R. 529). The proposal did not provide that work after 6:00 p.m. would as such be compensated at a premium rate (R. 98x-99x.) Among the provisions pertinent to work after 6:00 p.m. were the following (R. 97x-99x.):

*Section 4.1 Workday and Workweek*

Eight (8) hours exclusive of meal periods shall constitute the basic workday.

*Section 4.2 Meal and Rest Periods*

\* \* \* Each employee who is scheduled to work after 6:00 P.M. shall also be allowed one-half hour off for supper.

No lunch period shall begin earlier than 11:00 A.M. nor end later than 2:00 P.M. and no supper period shall begin earlier than 5:00 P.M. nor end later than 8:00 P.M.

*Section 4.3. Work Hours; No Split Shifts*

The hours and days to be worked by each employee shall be determined by the Employer except that no employee shall work a "split" shift, that is, any workday the continuity of which is broken by a period longer than a meal period.

*Section 4.6 Overtime and Other Premium Pay*

All employees may be required to work overtime.

Time and one-half the employee's regular hourly rate of pay shall be paid for all work:

- (a) In excess of 8 hours in any one day.
- (b) Effective September 3, 1963 after 44 hours in any week.

(c) On Sundays, and

(d) On Holidays.

*Premium pay* in the amount of twenty-five (25¢) per hour shall be paid in addition to the regular hourly rate for all work on the fifth day of a holiday workweek and on the sixth day of a regular workweek, except that this premium shall not be applicable to any work for which the employee is entitled to receive time and one-half.

In response to this proposal R. Emmett Kelly stated that he was not closing the door to negotiations on market operating hours (R. 529).

3. Meetings of the employer group and the union group were held on September 20, 28, 29 and October 4, 13 (R. 529-530). At the meeting of September 29, R. Emmett Kelly asked the employer group to make a breakdown of its contract demands (R. 596). The request was made after a series of meetings in which no progress was achieved and for this reason the union group asked the employer group "to give us something definite to work from. We wanted to know what type of night operation they wanted; we wanted to know what about female help; we wanted to know about ratios for female help; we wanted to know the price they would pay for night operation; we wanted to know about health and welfare, and various other things" (R. 596).

4. On October 17, Vorbeck reported to his superior (R. 341-342) on the status of the negotiations and stated on the subject of market operating hours that (R. 530-532):

The sub-division in the industry likewise shows up with respect to night operations. Here we are not encountering any opposition from the Associated Food Retailers whose representative has officially, possibly for the purpose of litigation, stated that his membership were interested in three nights of operation, Mondays, Thursdays, and Fridays. On the other

hand, the other major chains seem opposed to any discussion of the basis on which night operations can be had, although they joined with Kelly in stating their willingness to discuss night operations. For example, when I submitted a journeyman on duty contract provision, similar to that which we have in Local 350, Gary-Hammond, which has produced a lower wage cost for us than a more onerous requirement in our Joliet contract, the industry refused to permit me to offer it as an industry proposal.

The principal demands which employers are seeking are: . . . Four, complete removal from the contract of all restrictions on market operating hours.

5: A meeting of the employer group and the union group was held on November 1 (R. 530, 532). At a caucus of the employer group on that day the employers sought to find a common ground among themselves on the subjects of health and welfare and market operating hours (R. 532). The employers then and throughout the negotiations were divided on their approach to health and welfare (*ibid.*).

6. A meeting of the employer group and the union group was held on November 2 (R. 534). On behalf of the employer group, Vorbeck propounded a hypothetical question to the union group on market operating hours (R. 535). He put "the following three assumptions: (1) That all provisions of the contract, namely, wages, health and welfare, vacations, et cetera, had been settled; (2) That the industry reached agreement to limit the sale of fresh meat to three nights a week, Monday, Thursday and Friday; . . . and that (3) Jewel offers to drop its suit without prejudice and agrees not to reinstitute it during the term of the contract if the industry offer of night operations is accepted" (*ibid.*). Based on these three assumptions, Vorbeck "asked under what conditions will the union be willing to recommend that the hours when fresh meat may be sold be extended to Mondays, Thursdays and Fridays to 9:00 P.M." (*ibid.*).

The union group recessed for thirty-five minutes and R. Emmett Kelly then responded to the hypothetical question: "One, the assumptions are loaded; two, to negotiate night hours on the limited basis of three nights a week is unrealistic and would be conspiring with a group of employers to limit operations to certain nights and certain hours; three, the union is willing to negotiate for seven days each week and twenty-four hours per day operation; and, if all employers as a group present such a demand, the union would react with a demand covering such requests; four, the above premised on the assumptions tendered by the employers" (R. 535-536, 556, Stipulation to correct record, Jan. 22, 29, 1963).

The union group then left the meeting and a discussion among the employer group took place (R. 536). The employer group decided to send a subcommittee of two representatives to explore the matter further in a meeting with a subcommittee of the union group composed of R. Emmett Kelly and two others (*ibid.*). After the subcommittee meeting the employer representatives reported to the employer group that the union response was: (1) the unions were not favorable to night operations under any circumstances; (2) the demand for night operation will have to come from the entire industry and must provide for seven days and nights of operation; and (3), "if such a demand is received, the price will be stiff" (R. 537).

The objective of the employer group in propounding the hypothetical question was to try to ascertain what set of conditions the industry would have to meet to formulate an offer which would be acceptable to the union group, *viz.*, the unions' position on such matters as the number of journeymen on duty, the number of nights they would be expected to work, and whether their scheduled starting time for work after 6:00 p.m. would be at 9:00 a.m. or at noon (R. 554). According to Vorbeck, based on

R. Emmett Kelly's reply to the hypothetical question, the "unexpressed consensus" of the employer group "was that he had slammed the door, that he had made it impossible to negotiate further" (R. 556).

7. A meeting of the employer group and the union group was held on November 3, 1961 (R. 537). The employer group made a proposal to the union group which made no change in the existing provision pertaining to market operating hours (R. 537, 555). At this time the employer group regarded it as "rather hopeless" to obtain union agreement upon a modification (R. 555).

8. A meeting of the employer group and the union group was held on November 13 (R. 537). At a meeting of the employer group alone on that day Vorbeck informed the employer group that Jewel planned to make a proposal on behalf of itself on the subject of market operating hours (R. 537-538). Vorbeck distributed the proposal, which was in the form of a letter to R. Emmett Kelly dated November 13, 1961, to the employer group (R. 538). Vorbeck told the employer group that any employer was free to join in the proposal; no employer joined Jewel (R. 538, 553-554). The proposal was not submitted on that day by Vorbeck to the union group because the meeting "was a rather stormy session"; it did not "seem timely to present it to the union" because "We were having enough trouble on another major issue, which was health and welfare"; Vorbeck "wanted the union in a more receptive mood of mind" before submitting the proposal (R. 537-539). The proposal which Vorbeck distributed to the employer group but refrained from submitting to the union group provided that (R. 19x-21x):

*Jewel Offer No. 1—Self-Service Markets Only*

During these negotiations, and also the negotiations for the last several years, you have consistently maintained that neither our meat cutters, nor those of any other employer want to work after 6:00 P.M.



Our first offer is designed to accede to the stated wishes of your membership in this respect in that no employees will be required to work on Sundays or after 6:00 P.M., Mondays through Saturdays, inclusive. Since it is not possible to operate a service market without employees on duty, this limitation on the hours which employees may be required to work necessarily limits our offer to self-service markets.

Jewel offers to enter into a contract covering its self-service markets which will provide the same wages, health and welfare, vacations and all other terms of employment as those agreed upon between the Affiliated Locals and the industry, except as follows:

1. All restrictions on the hours at which meats and meat products may be sold shall be removed from the contract.
2. No employees other than the members of the Meat Cutters Union may stock or rotate the meats in self-service cases.
3. No employee may be required to work on Sundays or after 6:00 P.M., Mondays through Saturdays, inclusive, except that reasonable overtime may be required outside of such hours if the market or meat department is not open for the sale of meat.

*Jewel Offer No. 2—Self-Service and Service Markets*

In the belief that adequate remuneration for work after 6:00 P.M. may offset the desire of your membership not to work after 6:00 P.M., Jewel offers to enter into a contract applicable to both service and self-service markets which will provide the same wages, health and welfare, vacations and other contract provisions as those agreed upon between the industry and the Union's negotiating committee, except as follows:

1. All restrictions on the hours at which meats and meat products may be sold shall be removed from the contract.
2. No employees other than the members of the Meat Cutters Union may stock or rotate the meats in self-service cases.

3. All work in excess of 8 hours in any one day, or after 6:00 P.M. on Mondays through Saturdays, inclusive, or on Sundays, shall be paid for at time and one-half.
4. A journeyman must be on duty during all hours that fresh meat is offered for sale between the hours of 9:00 A.M. and 9:00 P.M. on Mondays, Thursdays and Fridays, and between the hours of 9:00 A.M. and 6:00 P.M. on Tuesdays, Wednesdays and Saturdays. If the needs of our business require that an employee be on duty after 6:00 P.M. on Tuesdays, Wednesdays or Saturdays, or at any time on Sundays, the first employee called to work during such hours must be a Journeyman Meat Cutter. If a journeyman is on duty, additional employees on duty at the same time may be apprentices or male meat clerks.

We shall, of course, endeavor to rotate any work required after 6:00 P.M. and on Sundays among qualified journeymen.

5. The workday for any employee scheduled to work after 6:00 P.M. shall be so fixed as not to require him to put in more than 8 hours on the job. Thus, an employee who would be expected to work to 9:00 P.M. with one hour off for supper would be scheduled to start work beginning at 12:00 noon.

An earlier starting time for an employee required to work at nights might be agreed upon, but we have not offered it in the belief that you would not want to require by union contract a longer workday than 8 hours.

9. A meeting of the employer group and the union group was held on November 16 (R. 539). Jewel excepted, agreement was reached by the employer and union groups (R. 539-542, 109x.). Jewel's exception from the agreement was limited to (a) health and welfare, and (b) market operating hours (*ibid.*).

(a) *Health and welfare*: The agreement reached was that, based on the choice expressed by majority vote of the

employees of each employer, the employees of that employer would participate in either a union-employer jointly administered health and welfare trust fund or would participate in an individual employer plan, but that participation in either the jointly administered fund or the individual employer plan would be cost-free to the employees (R. 540-541, 111x-112x). Jewel declined to agree that participation in its individual plan should be cost-free to its employees (R. 540-541, 113x-114x).

(b) *Market operating hours*: Between November 13 and 16 no employer informed Jewel that it would join the latter in its proposal on market operating hours (R. 539). On November 16, "at the conclusion of a very long, harassing day," at the time that the meeting of the employer and union groups was "breaking up," Vorbeck presented to R. Emmett Kelly the proposal on market operating hours which Jewel had distributed to the employers on November 13 (R. 542). Vorbeck asked Kelly to submit this proposal to the members at the contract ratification meeting preferably with a favorable recommendation but even without recommendation (*ibid.*).

10. A contract ratification meeting was held among members of Local 546 on November 26 attended by upwards of 3,000 members (R. 596). The course of the 1961 negotiations was reviewed with the members (*ibid.*) Jewel's offer No. 1 and offer No. 2 on market operating hours was read verbatim to the members (R. 597-598). Jewel's offer No. 1 was put to a vote of the members and was rejected by them (R. 598). Jewel's offer No. 2 was put to a vote of the members and was likewise rejected by them (*ibid.*). The proposal to which the employer group, Jewel excepted, had assented was put to a vote of the members and was accepted by them (*ibid.*). Contract ratification meetings were conducted by the other local unions on the

same day with the same customary communication being maintained between their meetings and that of Local 546 (*ibid.*). Jewel knew on November 27 that the members had rejected both proposals submitted by it pertaining to night operations (R. 543).

11. On January 2, 1962, Vorbeck informed R. Emmett Kelly that Jewel accepted the settlement which had been reached between the employer group and the union group, including the accord on health and welfare and market operating hours, but expressing reservation as to the validity of the market operating hours provision (R. 543-544, 135-136, 17x, 18x).

#### **VIII. BASIS OF THE UNIONS' OPPOSITION TO NIGHT OPERATION OF MEAT DEPARTMENTS AND CERTAIN FACTS PERTAINING TO IT.**

We now set forth the reasons why the unions oppose night operation of meat departments and certain of the underpinning facts which are the basis for that stand.

1. *The scope of Jewel's night and Sunday operation of its grocery departments; its aim to operate the meat departments the same hours; and its night and Sunday operation of meat departments outside the Chicago area:* Jewel states that, in seeking to remove the limitation upon market operating hours in the Chicago area, its purpose is to operate the meat department in its stores during the same hours as it operates the grocery department in its stores. (R. 348). At the close of 1957 and 1961, within the Chicago area, except for five stores in 1957 and two stores in 1961, Jewel in all other stores operated the grocery department after 6:00 p.m. one or more nights per week (R. 344-348, def. exs. 9, 10). Most grocery departments operated to 9:00 p.m., five nights per week, Monday through Friday; some operated six nights per week to 9:00 p.m.; one operated six nights<sup>2</sup> per week to

10:00 p.m.; and the plain trend was toward greater night operation.\*

In addition, at the close of 1961, Jewel operated the grocery departments of fifteen of its stores within the Chicago area on Sunday (R. 515, def. exs. 9, 10).

Finally, in 1962, of the 33 stores operated by the Jewel Food Store Division outside the Chicago area, within which no limitation upon market operating hours exists, in all stores but one the meat department operated after 6:00 p.m. one or more nights per week, with two stores operating the meat department to 11:00 p.m., eight stores operating the meat department six nights per week to

\* The operating hours after 6:00 p.m. of the grocery departments in Jewel's stores within the Chicago area at the close of 1957 and 1961 were as follows (R. 344-348, def. exs. 9, 10, pl. ex. 13 n, o):

	As of 12/28/57 Number of Stores	As of 12/30/61 Number of Stores
9:00 a.m. to 9:00 p.m., Mon. thru Fri.	65	131
9:00 a.m. to 9:00 p.m., Fri.	71	41
9:00 a.m. to 9:00 p.m., Thurs., Fri.	32	26
9:00 a.m. to 9:00 p.m., Mon., Thurs., Fri.	3	2
9:00 a.m. to 9:00 p.m., Mon., Thurs.	1	—
9:00 a.m. to 9:00 p.m., Thurs.	1	1
9:00 a.m. to 9:00 p.m., Fri.	—	2
9:00 a.m. to 7:00 p.m., Mon. thru Thurs.	—	1
9:00 a.m. to 9:00 p.m., Thurs., Fri.	—	3
9:00 a.m. to 7:00 p.m., Mon., Tues., Wed.	—	—
9:00 a.m. to 9:00 p.m., Mon. thru Sat.	—	—
9:00 a.m. to 10:00 p.m., Mon. thru Sat.	1	1
9:00 a.m. to 7:00 p.m., Fri.	2	—
9:00 a.m. to 8:30 p.m., Fri.	—	—
9:00 a.m. to 6:30 p.m., Thurs.	—	—
9:30 a.m. to 6:30 p.m., Mon., Tues., Wed.	—	1



9:00 p.m., Monday through Saturday, and seven stores operating the meat department on Sundays.<sup>7</sup>

2. *The Chicago area butchers' traditional opposition to night work:* The unions oppose night operation of meat departments because the employees they represent do not wish to work at night "but prefer being home with their families" (R. 601). As expressed by R. Emmett Kelly in a 1957 letter to the members, with night operations comes "absence from your homes and families . . ." (R. 131). Jewel itself recognized in a 1961 letter to R. Emmett Kelly that "During these negotiations, and also the negotiations for the last several years, you have consistently maintained that neither our [Jewel's] meat cutters, nor those of any other employer want to work after 6:00 P.M." (R. 19x).

This opposition to night work and operations is historical with the Chicago area meat cutters; "This was the tradition of the organization, that they did not want to work at night" (R. 601). As a boy "in the tail-end of . . .

<sup>7</sup>The market operating hours of the meat departments in these 33 stores was as follows (pl. ex. 13 n, o):

	Number of Stores
9:00 a.m. to 9:00 p.m., Fri.	3
9:00 a.m. to 9:00 p.m., Mon. thru Fri.	11
9:00 a.m. to 9:00 p.m., Thurs., Fri.	5
9:00 a.m. to 9:00 p.m., Mon. thru Sat.	5
8:00 a.m. to 9:00 p.m., Mon., Tues., Wed., Sat.	
8:00 a.m. to 11:00 p.m., Thurs., Fri.	1
9:00 a.m. to 9:00 p.m., Mon. thru Fri.	
9:00 a.m. to 2:00 p.m., Sun.	1
9:00 a.m. to 9:00 p.m., Mon. thru Fri.	
9:00 a.m. to 6:00 p.m., Sunday	2
9:00 a.m. to 9:00 p.m., Mon. thru Sat.	
10:00 a.m. to 6:00 p.m., Sun.	3
9:00 a.m. to 11:00 p.m., Mon. thru Fri.	
9:00 a.m. to 9:00 p.m., Sat.	
10:00 a.m. to 6:00 p.m., Sun.	1
9:00 a.m. to 6:00 p.m., Mon. thru Sat.	1

the gaslight era," accompanying his father and other union officials, R. Emmett Kelly "went around to the markets . . . to help close them down . . . on Sundays and at nights after 6 o'clock . . ." (R. 104-105, 3x). In a 1954 letter to the members, R. Emmett Kelly stated that "when you voted for 'no night operation' you were voting for your home life and the American right to share your time with your families"; "we've done it *alone* in the past" and "With your solid support and cooperation, Chicago and Suburbs will always close every night of the week at the *Union* closing hour of 6 P.M." (R. 3x, emphasis supplied).

This remains the attitude of the unions (R. 108-109). In 1955 the unions had removed a local union from the union bargaining group because that local union "permitted female help and Friday night operations" within its territory which the unions "have been fighting against all these years" (R. 112-113). The opposition of the meat cutters to night work and operations has been expressed by them many times at membership meetings, contract ratification meetings, and other meetings (R. 601). A meeting was held in July 1962 of over 1100 meat cutters employed by Jewel, conducted to determine whether they desired to participate in the jointly administered health and welfare fund or Jewel's individual plan and at which they voted to remain with the individual plan; taking advantage of the opportunity presented by "having that many meat cutters from Jewel under one roof", the employees were given a "run-down" of the "present status" of the litigation "in regard to night operation"; in a voice vote on the question whether "they wanted night work or didn't want night work," Jewel's employees voted "a unanimous no, that they did not want night work" (R. 601-603). In a mail ballot conducted among all of Jewel's meat cutters in October, 1962, at which they were asked to signify whether they were "opposed to working nights" or "in favor of working nights," Jewel's meat cutters voted 759 to 28 against working nights (R. 144-145, 22x, Tr. 147).

3. *Basis of opposition to self-service meat department operation without employees:* The unions oppose any proposal to operate a self-service meat department after 6:00 p.m. without employees on duty (R. 603). This opposition is based upon the following grounds:

(a) It cannot be done. It is necessary to have "people on duty" in order to operate a self-service meat department after 6:00 p.m. (R. 603). Personnel is required in order that the stock in the counter that is disarranged in the course of normal sale be kept in orderly shape; to restock and replenish merchandise; to clean the cases; and to perform the custom cutting that is required (*ibid.*). The sale of certain delicatessen items after 6:00 p.m. from self-service cases is authorized by contract upon the condition that these items be stocked in the cases by meat department employees before 6:00 p.m. and not be stocked or handled in the cases by any employees after that hour; experience in the sale of these items after 6:00 p.m. shows that "practically" always "at some time during the course of the evening hours that . . . [the] market is open . . . somebody from the grocery department, the grocery clerk, the assistant manager, the manager himself, is rearranging and restocking the cases" (R. 603-604, 18x (§ 2.3), 17x (§ 2.2)). Jewel operates a store located outside the Chicago area at Calumet Avenue in Hammond, Indiana; the self-service meat department in that store is ostensibly operated without employees on duty after 6:00 p.m. on Monday, Tuesday, and Wednesday (R. 289); yet, on Tuesday, November 7, 1962, at 8:40 p.m., two part-time grocery clerks were in the wrapping room of the meat department and one of the two, at the request of an apparent customer who stated that he wanted a two-pound rump roast, removed two rump roasts from a holding cooler in the wrapping room and brought it to the customer to make a selection (R. 494-495).

(b) To operate a self-service meat department after 6:00 p.m. without employees would add to the work load of the meat department employees by (i) the increased work entailed in putting the counters into proper shape

each morning after they have been disarranged the night before, and (ii) the increased work required on Friday before 6:00 p.m. in order to cut and prepare the meats to be sold after 6:00 p.m. (R. 604).

(c) Service and self-service meat markets compete with each other. Night operation of self-service meat departments without employees on duty would necessitate night operation of service meat departments. A service meat department can only operate with employees on duty. Furthermore, were the self-service meat department to operate at night and the service meat department to remain closed, there would be a loss of work and employment by meat cutters employed in the service meat departments. (R. 604-605.)

4. *Expert confirmation of the unions' view that the operation of a self-service meat department after 6:00 p.m. requires employees on duty:* Expert opinion holds the view that fresh beef, veal, lamb, mutton, and pork cannot be satisfactorily sold in a self-service meat department between the hours of 6:00 p.m. and 9:00 p.m. without employees on duty in the department (R. 415-416, 448-449). This opinion rests on the following bases: (a) In handling packages customers put back those they decide not to buy in the wrong parts of the counter and also tear the cellophane of the package rendering it unsalable unless re-wrapped; as a result, unless employees are on duty, the self-service counters in the meat department become disheveled, disarranged, and untidy. (b) Without employees on duty the self-service cases are not stocked with an adequate variety of meat because of insufficient initial stocking and lack of replenishment as stocks are depleted by sale; the desired cut may be in the cooler but not in the counter, and there is no one to bring it to the customer or to provide custom cutting for the customer. (c) There is no one to assist the customer in selecting meat, in advising her as to its preparation, and in explaining weight and price information on the packages. (R. 449-453, 416, 419-421.)

One expert has observed night operation of meat departments "across the country all the way from California to Florida" and he has found that "night operations without employees on duty has been unsatisfactory" (R. 449); ~~operation without employees on duty is confined to the dull business nights of Monday, Tuesday and Wednesday~~ (R. 451, 450); there is always at least a skeleton crew of employees on duty on Thursday and Friday and operations with a skeleton crew only is likewise unsatisfactory (R. 451-452).<sup>9</sup>

<sup>8</sup> In the printed record the quoted word "night" appears as "my." The stipulated correction from "my" to "night" appears at Tr. 1075-76.

<sup>9</sup> The opinion in this paragraph was expressed by Theodore J. Meindl, and in the preceding paragraph by Meindl and George P. Kokalis. Beginning in 1947 until sold by him in November 1961 to National Tea, Kokalis operated a chain of food stores in Chicago known as Sure Save Food Marts which, at the time of sale, consisted of eleven stores in which ten of the meat departments were operated on a self-service basis and one on a service basis (R. 412-414). Beginning in 1945 or 1946 until sold by him in 1958 to National Tea, Meindl operated a chain of food stores in Chicago known as Del Farm Stores which in 1957 consisted of twelve stores in which eleven of the meat departments were operated on a self-service basis and one on a service basis (R. 446-447). Kokalis and Meindl both favored night operation of meat departments during the time that they ran their chains in Chicago (R. 415, 421-422, 465, 584-585, 365); as described by Jewel, Meindl "would operate at any hours he could" (R. 365), and Kokalis' position on night operations "was very much like" Jewel's (R. 365). Before he began to operate Sure Save, Kokalis had been general manager of Grocerland Cooperative, a buying organization for a group of 155 independent food stores, and had operated a number of individual food stores containing meat departments (R. 414-415, 416-418). Before he began to operate Del Farm, Meindl was an A&P superintendent overseeing A&P's meat operations in 300 stores in Chicago and suburbs (R. 447-448); after he sold Del Farm, Meindl was engaged by different food store chains as a consultant and operator, including a current assignment for National Tea to advise upon improvement of store operations in a recently acquired chain of 115 stores in Pittsburgh and Youngstown (R. 453-457, 459-462, 464-465).



5. *Jewel's own policy, practice, and experience confirm expert opinion:* In the operation of its self-service meat departments Jewel states as "a must" that there be "a man on the counter at all times . . ." (R. 486); Jewel requires a butcher at the counter "to create . . . a friendly and courteous atmosphere between the meat cutters and the customer"; "to keep the counter straight, perform any services which the customer might request and fill special requests that the customer might want that she can't find in the counter" (R. 487-488). To keep Jewel's counters straight, the meat cutter at the counter removes bloody packages and torn packages and returns them to the back room of the meat department for rewrapping; he removes meat which is on the verge of spoiling or has spoiled and returns it to the back room for reprocessing if still salable or for throwing out if not; he removes slow-moving items and returns them to the back room to be recut into different items to stimulate their movement; on observing a customer selecting a piece of meat that is not salable but has not yet been removed from the counter, he dissuades her from taking it and explains that he will obtain a fresher cut for her; and he replenishes stock that has become depleted through sale (R. 488-489, 490-491, 507). In addition to the daytime hours, these services are performed between 6:00 p.m. and 9:00 p.m. when the meat department is open during these hours and a meat cutter is on duty (R. 490). To assure the continuous presence of a meat cutter at the counter Jewel installs a telephone at the counter enabling the meat cutter to communicate instructions to the back room without leaving the counter (R. 489-490, 507). Customer practices in the handling of meat observed in Jewel's stores, which prevail as well between the hours of 6:00 p.m. and 9:00 p.m. (R. 492), include replacing packages in the wrong part of the counter (sometimes to the extent of actually throwing packages from one section of the counter to another and leaving them on the grocery shelf), children running up and down

the counter poking holes in the packages containing soft meats, and customers deliberately tearing the package open to inspect the meat on the other side (R. 490-492).

6. *In Jewel's and A&P's operation of self-service meat departments at night outside the Chicago area butchers are on duty:* Outside the Chicago area, where no limitation upon market operating hours exists, the following situation prevails with respect to the employment of meat cutters at night in meat departments operated at night: In Jewel's three stores in Rockford, Illinois, the self-service meat department is operated five nights until 9:00 p.m., Monday through Friday (pl. ex. 13-0); at two of the stores, one or more butchers are employed at night on Monday, Tuesday, and Wednesday, and two or more on Thursday and Friday; at the third store, one butcher is employed at night on Monday, Tuesday, and Wednesday, and two on Thursday and Friday (R. 478-481). In two A&P stores in Rockford, the meat department is operated five nights until 9:00 p.m., Monday through Friday; in one store usually one meat cutter (sometimes two) is employed at night on Monday, Tuesday and Wednesday, one or more on Thursday, and two (sometimes four) on Friday (R. 482-485); in the second store one butcher is on duty each of the five nights (R. 482). At the A&P store in Freeport, Illinois, in which the meat department is operated five nights until 9:00 p.m., Monday through Friday, one meat cutter is employed at night on Monday, Tuesday and Wednesday, three or four on Thursday, and five on Friday (R. 484).

In Jewel's Food City store at Highland, Indiana, where the meat department is open six nights a week, a butcher is on duty on Friday and Saturday nights at the fresh meat counter, and, in addition, another butcher is on duty each night of the week in the sausage shop of the meat department (R. 242-243, 244-245); in Jewel's 7420 store at Hammond, Indiana, where the meat depart-

ment is open six nights a week, one butcher is on duty on Thursday night and one (sometimes two) on Friday night (R. 290-291, 289); in Jewel's 4501 store at Gary, Indiana, where the meat department is open six nights a week, a butcher is on duty Thursday and Friday nights (R. 293, 294). Except in the Gary-Hammond area (Lake County, Indiana), by union contract a butcher is required to be on duty whenever the meat department is operated at night (R. 547). In the Gary-Hammond area, butchers are on duty at least two nights a week, and butchers may be on duty additional nights a week as required by the volume of business (R. 547-548). The result is that, with only few exceptions, meat cutters are on duty whenever a meat department is open after 6:00 p.m. (*ibid.*). Only when business is light is a meat department open after 6:00 p.m. without a meat cutter on duty (R. 548; see also, R. 492, 493-494, 644-645).

7. *With a single belated exception every proposal to operate a self-service meat department at night called for employees on duty:* Excepting Jewel's offer dated November 13, 1961 (*supra*; p. 41), neither Jewel nor any other employer ever proposed that a self-service meat department be operated after 6:00 p.m. without employees on duty (R. 605). And, again excepting Jewel's offer dated November 13, 1961, every proposal made in the 1957, 1959 and 1961 negotiations for the operation of a meat department after 6:00 p.m. pertained to both service and self-service markets (R. 548-549). In general all food stores within a competitive area operate the same number of hours (R. 546).

8. *The relation of night operation to wages:* In the 1957, 1959, and 1961 negotiations, R. Emmett Kelly stated that market operating hours was a negotiable issue (R. 605). As he explained, given a proper proposal for night operation, "there would be some possibility of having it" (*ibid.*). Were the employers to offer a

sufficiently high premium payment for night work, "certainly people have a way of changing their minds" (R. 616). However, an offer for time and one-half for work after 6:00 p.m., when coupled with the flexible work day, represents a half-time premium (R. 617). As Jewel recognized in its offer dated November 13, 1961, "half-time premium pay" is "involved in paying time and one-half for work after 6:00 P.M. . . ." (R. 21x). Jewel understood this as early as August 30, 1957, for in explaining to Bromann of Associated the import of certain contracts with local unions other than the petitioner unions, Jewel stated that: "Both contracts require us to pay time and one-half after 6:00 p.m., but since we are enabled to start the workday as late as 12:00 noon, this means that we can incorporate such overtime as part of the basic workweek, if we so desire. This also means that our expense for such overtime is increased merely by the half-time extra rather than time and a half" (R. 40x). R. Emmett Kelly thinks that "true time and a half" would be a "fair premium" but he does not "know whether . . . [he] can convince the membership we represent on that" (R. 617). Thus far no money offer made by the employer group has been sufficiently high to persuade the members to work at night.<sup>10</sup>

9. *Not conspiracy but unilateral self-interest*: At no time has any union representative had any agreement or understanding with any employer to insist on maintaining opposition to night marketing hours (R. 606). The union representatives base their position on night operating hours exclusively upon what they regard to be the best self-interest of the members (*ibid.*).

<sup>10</sup> "Well, it is difficult for me to say how much more money, because frankly, there has never been the kind of offer made from the employer group that would be awfully strong for these people to make a decision in that regard" (Tr. 1282).

### IX. THE DECISION OF THE DISTRICT COURT.

In summarized form the facts set forth in the Statement are encased in the District Court's findings (R. 661-678). Based on them, the District Court found that "Lifting the restriction on marketing hours would mean a return to longer hours and night work. This is evident from the face of the employer proposals, which included the 'flexible day,' night hours, and wage premiums 'to sell' night work, and from the practices of the trade, particularly in plaintiff's stores where night sales of fresh meat were authorized" (R. 672):

The District Court also addressed itself to the ostensible alternative that a self-service meat department could operate without any employees on duty after 6:00 p.m. The Court noted that "Only one proposal was ever made by . . . [Jewel] in the course of the prolonged negotiations on all three contracts, which suggested night operations without butchers on duty, and that was submitted to the unions at the end of the day as negotiations were 'breaking up' on November 16, 1961" (R. 667), the last day of negotiations (R. 539-542). The Court observed that the unions "questioned the seriousness of that proposal under the circumstances" (R. 667). Even taking it at face value, the Court found that it "was contrary to the Union's self-interest. It meant that their work would be done by others unskilled in the trade, since the evidence showed that in stores where meat is sold at night it is impractical to operate without either butchers or other employees. Someone must arrange, replenish and clean the counters and supply customer services. In addition, that proposal would involve an increase in workload in preparing for the night work and cleaning the next morning" (R. 672).

The District Court therefore stated as its ultimate conclusion that (R. 672-673):

Thus, the union's insistence on the retention of the marketing hour restriction was based on its desire



to protect its right not to work at night, and to protect its work from being taken by others. Those facts and circumstances are inimical to plaintiff's theory that the unions insisted on the restriction as the tool of the employer group and at their behest. On the contrary, the evidence established that the restriction was imposed after arm's length bargaining, including an overwhelming strike vote against night work, and was fashioned exclusively by the unions to serve their own interests—how long and what hours members shall work, what work they shall do, and what pay they shall receive. These are not objects which the anti-trust laws proscribe. They are conditions of employment, and as such are clearly within the labor exemption of the Sherman Act.

#### **X. THE DECISION OF THE COURT OF APPEALS.**

The Court of Appeals reversed. It did not disturb any of the findings of fact of the District Court (R. 693). It rejected as a matter of law the "defendants' contention that an agreement pertaining to market operating hours is exempt from the antitrust laws since it was entered into in the self-interest of the employees to attain or maintain conditions deemed by the union relevant to the employees' working welfare" (R. 693). It held that setting market operating hours was an exclusive managerial prerogative wholly outside the unions' rightful concern (R. 693-695). Contractual limitation of market operating hours was illegal even though the limitation "was imposed after arm's length bargaining . . ." (R. 693). The requisite union abetment of non-labor groups united in a conspiracy to violate the antitrust laws was sufficiently established by an agreement secured by a union in consummation of ordinary collective bargaining negotiations (R. 697). According to the Court of Appeals, "whether it be called an agreement, a contract, or a conspiracy, is immaterial" (R. 697). It therefore concluded that the limitation upon market operating hours was "illegal and void because violative of the Sherman Act" (R. 697).

**SUMMARY OF ARGUMENT****I**

The limitation upon market operating hours had its origin in a strike in 1919 called in part to lessen the then prevailing 81 hour, 7 day work week; the successful outcome of the strike resulted in the establishment of the limitation on market operating hours in furtherance of the butchers' desire to shorten the working day and to keep from working night hours; it continues for that purpose. Collective bargaining on the subject of market operating hours is conducted at arm's length in good faith, identical in manner with the negotiation of any other subject, and the unions' position is determined exclusively by promotion of the self-interest of the employees they represent. The subject of market operating hours intimately embraces every aspect of wages, hours, and working conditions; resistance to removal or modification of the limitation is based on preservation of the butchers' wish not to work at night; accession to removal or modification requires agreement upon how many nights and how late into the night butchers shall work, the number of butchers to work at night, and the compensation for night work.

Collective bargaining and mutual agreement upon market operating hours can therefore no more violate the antitrust laws than can collective bargaining and mutual agreement upon vacations, health and welfare funds, work assignment, or any other subject involving wages, hours, and working conditions. The result is the same whether viewed through the lens of the National Labor Relations Act or the labor exemption of the Sherman Act. Subsuming every element of wages, hours, and working conditions, market operating hours is a mandatory subject of collective bargaining, and the negotiation of an agreement on it, backed by the right to strike, is the essence of protected activity under the National Labor Relations Act. The controversy is therefore not within the coverage, much less

the prohibition, of the Sherman Act. Furthermore, viewing the controversy as an aspect of commercial competition to which the Sherman Act extends, the labor exemption is clearly applicable. For the limitation upon market operating hours in origin and continuance was conceived and maintained, not by a combination of business men aided by a union engaged in a mercantile scheme offending the antitrust laws, but by the unions acting independently of any business men, exerting their own bargaining power in pursuit exclusively of their members' self-interest in their working welfare, and securing incorporation of the limitation into the collective bargaining agreements in consummation of this end.

## II

The dispute is within the exclusive primary jurisdiction of the National Labor Relations Board. When activity is *arguably* within the protection or the prohibition of the National Labor Relations Act a controversy concerning it is within the sole competence of the Board. Commitment of the subject to the Board obtains even if the complaint is grounded in an alleged restraint of trade. And a federal court no less than a state court or administrative agency is required to defer to the Board's jurisdiction.

In this case, the controversy over market operating hours inescapably pertains to the hours butchers shall work, the work they shall have, and the compensation they shall receive. To achieve their end the unions resorted to collective bargaining backed by the right to strike. The matter is therefore to say the least *arguably* within the protection of the National Labor Relations Act.

But if market operating hours is not *arguably* a mandatory subject of collective bargaining, and negotiation coupled with the capacity to draw on economic pressure not *arguably* the protected means of dealing with the subject, the matter is then necessarily within the rubric

of activity arguably *prohibited* by the National Labor Relations Act. For the unions have insisted in collective bargaining upon the limitation, and to insist upon a non-mandatory subject is to refuse to bargain. The National Labor Relations Board is empowered to require cessation from that insistence, as well as from auxiliary conduct like strikes designed to effectuate it.

One way or the other, therefore, the controversy can be conclusively determined by the Board, either to validate or illegalize the unions' conduct, and effectively to stop it if illegal. To this situation the doctrine of primary jurisdiction clearly extends. For a court to decline or defer jurisdiction over an alleged antitrust violation in favor of an agency's determination of interrelated cognate questions falling within the purview of a regulatory statute is of course no innovation. Recourse to the agency has been required under the Interstate Commerce Act, the Shipping Act, the Packers and Stockyards Act, and the Federal Aviation Act. Prior resort is no less essential under the National Labor Relations Act. As with other regulatory statutes, so with the National Labor Relations Act, in no other way can responsible accommodation of antitrust policy with regulatory policy be achieved.

## ARGUMENT

### I. PRELIMINARY STATEMENT.

The crux of this case lies in the root finding that "the unions' insistence on the retention of the marketing hour restriction was based on its desire not to work at night, and to protect its work from being taken by others. . . . [T]he evidence established that the restriction was imposed after arm's length bargaining, including an overwhelming strike vote against night work, and was fashioned exclusively by the unions to serve their own interests—how long and what hours members shall work, what work they shall do, and what pay they shall receive" (R. 672).

Three analytically separate elements emerge from this finding. First, subsumed in the negotiation of market operating hours is determination of "how long and what hours members shall work, what work they shall do, and what pay they shall receive." Market operating hours is therefore a mandatory subject of collective bargaining, within the protected ambit of the National Labor Relations Act, for its essential ingredients are "rates of pay, wages, hours of employment, or other conditions of employment." NLRA, §§ 9(a), 8(d), 8(a)(5), 8(b)(3), 7. A subject within this class presents, properly speaking, no question of a labor exemption from the Sherman Act. For the Sherman Act does not cover, much less prohibit, activity within the field which defines mandatory bargaining. Commercial competition, not wages, hours, or working conditions, is the domain of the Sherman Act. To be sure, setting labor standards can and does influence mercantile rivalry; labor cost, the availability of men to work, and the conditions under which they toil necessarily enter into the price of goods and services and the time they can be marketed. But the Sherman Act is indifferent to the effect upon commercial competition which flows from the determination of labor standards. *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 503-504 and n. 24, 507, n. 25. For, whatever its proliferation, the matrix of the controversy is wages, hours, and working conditions.

The second element which emerges from the finding is that to get and keep contractual control of market operating hours the unions resorted to "arm's length bargaining, including an overwhelming strike vote against night work. . . ." Arm's-length bargaining denotes ends and means self-determined by the unions. Even within the area of commercial competition, absent union abetment of a business men's conspiracy to violate the antitrust laws, union activity conducted by a labor organization in its self-interest is immune from the Sherman Act. This is, properly speaking, the labor exemption. It means that, whether



or not the conduct charged as a restriction upon commercial competition would constitute an antitrust violation, the Sherman Act excepts union activity when the union, acting independently of aid to a business men's combination, exerts its own bargaining power to serve its own end.

The third element which emerges from the finding is the question whether its making is within the original competence of the District Court at all. Collective bargaining upon a subject is mandatory if it partakes of "rates of pay, wages, hours of employment, or other conditions of employment." Whether a controverted subject is within or without this class is initially for the National Labor Relations Board to decide. If mandatory, to bargain and strike for the purpose of obtaining accession to the union's demand is protected activity; if not mandatory, insistence to an impasse upon the demand is within the power of the Board to prohibit, as is a strike or cognate pressure in furtherance of the demand. The decisive adjudicatory role that is allotted to the Board places the determination of the controversy within its exclusive primary jurisdiction.

We shall treat in turn with each of these three elements inherent in the critical finding. We shall show, first, that market operating hours subsumes every aspect of "rates of pay, wages, hours of employment, or other conditions of employment," and is therefore a mandatory subject of collective bargaining outside the scope of the Sherman Act and within the protection of the National Labor Relations Act. We shall show, second, that even if market operating hours is *arguendo* within the area of commercial competition, the means employed to get and keep contractual control of it are within the labor exemption. We shall show, lastly, that the controversy is within the exclusive primary jurisdiction of the National Labor Relations Board. Determination of any of the three issues in petitioners' favor requires reversal of the judgment.

**II. MARKET OPERATING HOURS SUBSUMES EVERY ELEMENT OF "RATES OF PAY, WAGES, HOURS OF EMPLOYMENT OR OTHER CONDITIONS OF EMPLOYMENT"; CONTRACTUAL CONTROL OF IT THROUGH COLLECTIVE BARGAINING IS THEREFORE WITHIN THE PROTECTED AMBIT OF THE NATIONAL LABOR RELATIONS ACT AND OUTSIDE THE SCOPE OF THE SHERMAN ACT.**

Market operating hours is rooted in working hours, in wages, and in other conditions of employment. In origin and continuance its regulation by collective bargaining agreement responds directly to safeguarding the employees' interest in when they shall work, who shall do the work, how much work shall be done, and what wage shall be paid for the work. It is in these terms that the issue has been fought out at the bargaining table and by strike action and authorization.

**A. No Night Work Is at the Heart of the Issue of Market Operating Hours.**

At the heart of the unions' opposition to extension of market operating hours is the wish of the employees they represent not to work at night but to be home with their families (*supra*, pp. 47-48). This is the tradition of the Chicago area butchers. This is the sentiment they have voiced and voted. This is the way they want to live. The goal they seek through absence of night work is "time for happy, normal family life and social contacts with other families and friends." Daughtery, *Labor Problems in American Industry*, 202 (4th ed., 1938).

**B. In Origin and Evolution Control of Market Operating Hours Is Designed to Shorten the Work Day and to Keep From Working Nights.**

Limitation upon market operating hours began more than 45 years ago. In 1919 the operating hours of meat markets in Chicago were 7:00 a.m. to 7:00 p.m., Monday through Friday, 7:00 a.m. to 10:00 p.m. on Saturday, and 7:00 a.m. to 1:00 p.m. on Sunday (*supra*, pp. 13-14). The butcher worked the full 81 hours, 7 days per week, that

the market was open (*ibid.*). On November 1, 1919, the Chicago butchers went on strike; the objective of the strike was "more money and less hours"; the union "wanted to cut off an hour in the morning and an hour at night, and no Sunday hours" (*ibid.*).

The successful outcome of the strike resulted in the establishment of market operating hours at 8:00 a.m. to 6:00 p.m., Monday through Friday, 8:00 a.m. to 9:00 p.m. on Saturday, and no Sunday operation (*supra*, p. 14). The interrelationship of marketing and working hours as opposite sides of the same coin was shown on the face of the ensuing 1920 standard collective bargaining agreement "governing Meat Cutters in Retail Meat Markets in the City of Chicago, Illinois and Suburbs" (*ibid.*). After first providing that "Nine hours shall constitute the basic working day, hours shall be 8 A.M. to 6 P.M. excepting Saturdays and days preceding holidays beginning at 8 A.M. and quitting at 9 P.M.," it next provided that "*It is expressly understood that no customers will be served who come into the market after 6 P.M. and 9 P.M. on Saturdays and on days preceding holidays . . .*" (*ibid.*, emphasis supplied).

The same relationship of marketing and working hours appears on the face of the current agreements. The requirement that "Market Operating hours shall be 9:00 a.m. to 6:00 p.m. Monday through Saturday" has its counterpart in the requirement that "the basic workday . . . shall be scheduled . . . to end no later than 6:00 p.m." (*supra*, pp. 11-12). And through the years, beginning in 1919, the stopping time for marketing and working evolved abreast of each other, the time for one corresponding to the time for the other, until finally fixed at 6:00 p.m. for both in 1947 (*supra*, p. 15).

And so, as the District Court found, "the marketing hour restriction originated as a result of the union's strike against the 8 1/2 hour, 7 day work week in 1919"; it was inserted in the ensuing 1920 collective bargaining agree-

ment "in juxtaposition to, and as an implementation of, the Article specifying hours of work for butchers"; and "through the years each change in hours of labor brought a corresponding change in market operating hours" (R. 662, 671-672).

**C. The Employers' Proposals Show on Their Face That the Extension of Marketing Hours Means the Extension of Working Hours.**

It is plain on the face of the proposals made to the unions by Jewel and other employers in the course of negotiations that the extension of market operating hours inevitably means the extension of working hours. Thus:

(1) *Jewel's proposal of November 1, 1957*: In proposing five nights of operation Monday through Friday, Jewel specifically stipulated that journeymen were to be on duty Thursday and Friday and that the first employee called on other nights must be a journeyman, with the workday to be concomitantly changed to an 8-hour flexible workday to be worked between the hours of 8:00 a.m. to 9:00 p.m., Monday through Friday (*supra*, p. 26).

(2) *The all-employer proposal, Associated temporarily abstaining, of November 12, 1957*: In proposing Friday night operation, the offer specifically stipulated that a male employee was to be on duty during market operation, with a concomitant change in the workday to an 8-hour workday to be worked on Friday between the hours of 8:00 a.m. to 9:00 p.m. (*supra*, p. 28).

(3) *The all-employer proposal, Associated included, of November 15, 1957*: In proposing Friday night meat department operation effective October 6, 1958, the offer specifically stipulated that a male employee was to be on duty during market operation, with a concomitant alteration of the workday on Friday to an 8-hour day to be worked between the hours of 8:00 a.m. to 9:00 p.m. effective

with the commencement of Friday night operation (*supra*, pp. 28-29).

(4) *Jewel's proposal of November 22, 1957*: In proposing Friday night operation to 9:00 p.m., Jewel specifically stipulated that a male employee must be on duty at all hours that the market is open for the sale of meats, with the concomitant requirement that the employer is to have the option to work male employees after 6:00 p.m. at time and one half (*supra*, p. 31).

(5) *The all-employer proposal of September 12, 1961*: This proposal committed market operating hours to the unlimited discretion of the employer and in concomitant recognition of the night work required by this leave it provided for an employee to be "scheduled to work after 6:00 P.M."; it established a "supper period" to "end" no "later than 8:00 P.M."; it stipulated that the "hours and days to be worked by each employee shall be determined by the Employer"; and it mandated that "All employees may be required to work overtime" (*supra*, pp. 36-38). This proposal for unrestricted market operation reflected Jewel's forecast that the removal of the limitation upon market operating hours "would inevitably mean that the market operations would automatically be opened to seven days a week, twenty-four hours per day, of operation" (*supra*, p. 25). And in the 33 stores operated by Jewel outside the Chicago area, where no limitation upon market operating hours exists, Jewel has extended market operation in a substantial number of its stores to 11:00 P.M., to six nights per week, and to Sunday, *supra*, pp. 46-47).

(6) *Jewel's Offer No. 2, dated November 13, 1961*: In proposing night operations, this offer stipulated that a "journeyman must be on duty during all hours that fresh meat is offered for sale between the hours of 9:00 A.M. and 9 P.M. on Mondays, Thursdays, and Fridays," and "If the needs of our business require that an employee be on duty after 6:00 P.M. on Tuesdays, Wednesdays or Satur-



days, or at any time *on Sundays*, the first employee called to work during such hours must be a Journeyman Meat Cutter" (*supra*; pp. 42-43, emphasis supplied).

(7) In so many words, therefore, the employers' proposals for night marketing call for night work. Extension of marketing hours means extension of working hours. Opposition to extension of marketing hours is required to fulfill the butchers' wish not to work at night but to be home with their families. Indeed, excepting Jewel's Offer No. 1, dated November 13, 1961 (*supra*, p. 41), neither Jewel nor any other employer ever proposed to operate a meat department, either service or self-service, after 6:00 p.m. without employees on duty (*supra*, p. 54). And that offer, to which we now turn, is a delusion.

**D. Jewel's Isolated and Belated Proposal to Operate a Self-Service Meat Department After 6:00 P.M. without Employees on Duty Is a Delusion.**

Jewel's Offer No. 1 dated November 13, 1961, proposing to operate a self-service meat department after 6:00 p.m. without requiring butchers to be on duty, was not made to the unions until the very end of negotiations on November 16, 1961, "at the conclusion of a very long, harassing day" as the final negotiating meeting was "breaking up" (*supra*, p. 44). Its isolated character (the single proposal of that kind made by anyone in the course of three lengthy contract negotiations in 1957, 1959, and 1961) and its belated tender (not submitted to the unions until the very close of negotiations) renders it on these accounts alone suspect as a serious proposal. It did not constitute a bargaining objective but a litigation tactic. This aside, on the merits of the proposal, the unions' opposition to it is grounded in safeguarding the employees' interest in their work and hours. Thus:

**1. A self-service meat department cannot operate after 6:00 p.m. without employees on duty.**

(a) Entertainment of a proposal to operate a self-service meat department at night without butchers to man it, requires belief that the department *can* operate after 6:00 p.m. without employees on duty. The unions do not accept that supposition but affirmatively reject it (*supra*, p. 49). Personnel is required to operate a self-service meat department after 6:00 p.m. in order to provide the essential services of rearranging the stock in the counters, to keep them orderly, to replenish stock depleted by sale, to clean the cases, and to furnish the custom cutting and other personal attention required by the customers (*ibid.*). The unions' experience with the sale of certain delicatessen items from the self-service counters after 6:00 p.m., ostensibly to be performed without the use of any personnel in the meat department at night, shows that virtually invariably a grocery clerk or supervisor will in the course of the night rearrange and restock the cases (*ibid.*). Indeed, an instance of cheating was uncovered in the very course of trial. In a Jewel store outside the Chicago area, ostensibly operated on Tuesday nights without employees on duty, customer service in the meat department was in fact furnished by two grocery clerks (*supra*, p. 49).

Accordingly, to operate a self-service meat department after 6:00 p.m. supposedly without personnel foreseeably means, not that the department will operate without employees, but that it will operate without butchers. But the butchers' concern is plainly twofold: *not* to work nights and *not* to have their work taken from them. Clearly no proposal can be acceptable to the unions which, while preserving the butchers' wish not to work after 6:00 p.m., does so by surrendering their work to others. And so, as the District Court found, "the union's insistence on the retention of the marketing hour restriction was based on its desire not to work at night, and to protect its work from being taken by others" (R. 672).

(b) The judgment of the unions that a self-service meat department cannot operate without employees on duty after 6:00 p.m., and that therefore a proposal based on the contrary assumption cannot be a genuine basis for negotiation, has solid support not only in their own experience but in other commanding considerations. Expert opinion holds the view that the satisfactory sale of fresh meat in a self-service meat department between 6:00 p.m. and 9:00 p.m. requires that butchers be on duty (*supra*, pp. 50-51). In the operation of its self-service meat departments Jewel itself posits as "a must" that there be "a man on the counter at all times. . . ." (*supra*, p. 52). Outside the Chicago area, in the territory in which no limitation upon market operating hours exists and in which Jewel operates 33 stores, with only few exceptions meat cutters are on duty whenever a meat department is open after 6:00 p.m. (*supra*, pp. 53-54). In every location but the Gary-Hammond area meat cutters are on duty every night that the meat department operates, and in the Gary-Hammond area meat cutters are on duty at least two nights a week and may be on duty additional nights a week as required by the volume of business (*supra*, pp. 53-54). And only when business is light does Jewel operate a meat department after 6:00 p.m. without a meat cutter on duty (*supra*, p. 54). Thus whenever business is brisk, and hence during the only time that the night operation of a meat department can be truly meaningful, meat cutters are required to be at work after 6:00 p.m. This conforms with the experience throughout the country, for night operation of a meat department without employees on duty is confined to the dull business nights of Monday, Tuesday, and Wednesday, there always being employees on duty on Thursday and Friday (*supra*, p. 51).

(c) The upshot is that to propose to operate a self-service meat department without employees on duty is to offer to play Hamlet without Hamlet. As the District Court found, "in stores where meat is sold at night it is

impractical to operate without either butchers or other employees. Someone must arrange, replenish and clean the counters and supply customer services" (R. 672); "the record here shows that night meat sales, even in self-service markets; require as a matter of practical operation the services of either butchers or other employees. . . ." (R. 675). At the very least the unions' position and consequent stand in negotiations that personnel is required to operate a self-service meat department at night is surely reasonable and *bona fide*.

2. Even if it could be done, to operate a self-service meat department at night without employees would require either that butchers work in the service meat departments at night or would result in a loss of work and employment in the service meat departments.

Even if it were possible to operate a self-service meat department without employees on duty, a proposal to do so ignores the relationship of service to self-service markets. Service and self-service markets compete with each other (*supra*, p. 50). Night operation of self-service markets without employees on duty would necessitate night operation of service markets (*ibid.*) But a service market can only operate with employees on duty (*supra*, pp. 6-7, 42). Night operation of a service market would thus necessarily defeat the butchers' wish not to work at night. Furthermore, on the alternative that the self-service market operate at night but the service market remain closed, there would be a loss of work and employment by meat cutters employed in the service markets (*supra*, p. 50). For obviously if meat were available after 6:00 p.m. in a self-service market, but not a service market, a part of the trade that would otherwise patronize the service market would inevitably be siphoned off to the self-service market, and the loss of work and employment follows the loss of trade. Clearly then no proposal to operate a self-service market without employees on duty can be acceptable to the unions, for it impales them on the horns of the dilemma

that, if night operation of service markets is concomitantly granted, it causes the butchers in the service markets to work at night, and if it is not granted, it causes the butchers in the service markets to lose work and employment.

This interrelation of service and self-service markets is underscored by the fact that, considering only multiple store operators (those operating more than one store), the record shows that in the Chicago area in 1957 there were 443 self-service markets and 275 service markets, and in 1962 there were 609 self-service markets and 98 service markets (*supra*, pp. 9-10). The interrelationship is recognized in that part of the self-service contract which provides that: "The parties agree that in the event the market operating hours of service markets are extended at any time during the term hereof, the extension shall likewise apply to the market operating hours of self-service markets" (*supra*, p. 12). This provision had been drafted by Jewel itself for inclusion in the first self-service contract negotiated in 1952 (*supra*, p. 13). It reflects the position that Jewel has maintained throughout that no employer should have more favorable terms than any other employer (*ibid.*). It is therefore not surprising that, but for Jewel's isolated and belated Offer No. 1 dated November 13, 1961, every proposal made in the 1957, 1959, and 1961 negotiations for the operation of a meat department after 6:00 p.m. pertained to both service and self-service markets (*supra*, p. 54). And a proposal to operate a service market at night is inescapably a proposal to work at night.

3. Even if it could be done, to operate a self-service meat department at night without employees on duty would increase the butchers' work load.

Finally, as the District Court found (R. 672), even if it were possible to operate a self-service meat market without employees on duty, accession to a proposal to do so would add to the work load of the meat department employees



by (a) the increased work entailed in putting the counters in proper shape each morning after they have been disarranged the night before, and (b) the increased work required on Friday before 6:00 p.m. in order to cut and prepare the meats to be sold after 6:00 p.m. (*supra*, pp. 49-50).<sup>11</sup> Work load is a subject of mandatory collective

<sup>11</sup> Night marketing hours would not increase the existing quantum of meat that customers purchase; it would redistribute the time within which the same quantum of meat would be sold. Thus, according to Jewel, some consumers prefer not to shop on Saturdays. If marketing hours were extended from 6:00 p.m. to 9:00 p.m. on Fridays, those consumers would presumably transfer their trade from Saturdays to Friday nights. To accommodate them the pre-6:00 p.m. Friday work load of butchers would have to be increased, else there would be no meat for the shopper to buy after 6:00 p.m. This increase in the pre-6:00 p.m. workload on Friday results, not from an increase in the amount of meat bought, but from a transfer of time of purchase from Saturdays to Friday nights.

No adverse effect on meat consumption is attributable to the limitation on marketing hours. In 1951 operating hours of meat markets in Chicago (*supra*, p. 15) and Cleveland (*infra*, p. 127) were limited to 6:00 p.m., Monday through Saturday. A careful study shows that in that year the Chicago and Cleveland consumer was near the top of the rank in meat consumption. Based on figures compiled by the Bureau of Labor Statistics, the American Meat Institute made a study of the average consumer expenditures for meat per housekeeping unit in 49 large cities during 1951 (R. 62x). Of the 49 cities, Chicago stood fourth highest in expenditures for all meat, second highest for fresh pork, and fifth highest for beef, while Cleveland stood third highest for all meat, fourth highest for total beef, second highest for round steak, and fifth highest for total veal (R. 65x). Of the eleven cities with a population of one million and over, Chicago stood third highest in expenditures for all meat, highest for pork, and third highest for beef, while Cleveland stood second highest for total meat, second highest for total beef, and fourth highest for total veal and total pork (R. 66x).

Thus, as the District Court found, the evidence did not "in any way establish that less meat is consumed in this area, in proportion to population and income, because of the restriction, than

bargaining.<sup>12</sup> Limiting marketing operating hours to 6:00 p.m. thus fulfills the unions' interest in assuring against an increase in work load.

**E. Wages Are an Essential Constituent of the Extension of Market Operating Hours.**

Wages join hours and work as essential constituents of market operating hours. Because working at night is an indispensable ingredient of extension of marketing hours, negotiations throughout have fixed on the question of the premium, if any, to be paid for night work. Proposals ranged from zero, to 25 cents per hour, to a half-time premium (*supra*, pp. 21-22, 25, 26-27, 28, 29, 31, 37, 43). Increase in the basic wage rate has also been explored to induce assent to night work (*supra*, pp. 21-22, 25). The increase was sometimes tied to concessions on other issues as well (*supra*, p. 25). The objective behind an enhanced wage offer in whatever form it took was to make it sufficiently high so that the unions would endeavor "to sell" night work to the members, but not so high that the increased labor cost would be unattractive to the employers (*supra*, pp. 21-22). As expressed by Jewel in its Offer No. 2 dated November 13, 1961, the compensation for night

in areas where fresh meat is sold at night. In fact, the objective statistics indicated that the restriction had no discernible effect" (R. 676). Other factors determine meat consumption. The meat purchased by a family is related directly to its income, the higher the income the greater the amount that is spent for meat (R. 76x, 79x). In addition to income, it reflects also "differences among households in race, nationality and regional backgrounds, education, size and other characteristics" (R. 79x). But meat consumption is not influenced by the absence of night shopping. It would be foolish to suppose that a New York or Los Angeles family buys more fresh meat than a comparable Chicago or Cleveland family because the meat in New York and Los Angeles can be purchased after 6:00 p.m.

<sup>12</sup> *Beacon Piece Dyeing & Finishing Co.*, 121 NLRB 953; *Woodside Cotton Mills Co.*, 21 NLRB 42, 54-55.

work contained in that proposal was made in "the belief that adequate remuneration for work after 6:00 P.M. may offset the desire of your membership not to work after 6:00 P.M. . . ." (*supra*, p. 42). The unions do not demur that, given sufficiently attractive payment for night work, "there would be some possibility of having it," for "certainly people have a way of changing their minds," but they divide from the employers on the question of how much is sufficient (*supra*, pp. 54-55). And thus far no money offer made by the employers has been high enough to persuade the employees to work at night (*ibid.*).

**F. Regulation of Market Operating Hours By Collective Bargaining Agreement Exists in Areas Other Than Chicago.**

Regulation of market operating hours by collective bargaining agreement is not confined to the Chicago area, but exists elsewhere throughout the country (*infra*, pp. 127-131). As the District Court found, "Similar contract provisions, or with variants for a single night operation, are in operation in other metropolitan areas" (R. 664). Included are the major metropolitan areas of Cleveland, Seattle, and St. Paul (*infra*, pp. 127-129, 130). The containment of the subject within labor agreements is relevant to show that it is within the scope of employment standards fixed by collective bargaining. *Railroad Telegraphers v. Ch. & N. W. R. Co.*, 362 U.S. 330, 336, *N.L.R.B. v. American National Ins. Co.*, 343 U.S. 395, 405-407; *California Sportswear & Dress. Asso.*, 54 FTC 835, 874.

**G. Market Operating Hours Cannot Be Deprived of Its Labor Attributes By Invoking the Talisman of "Managerial Prerogative."**

The upshot is that, as the District Court found, the limitation upon market operating hours "was fashioned exclusively by the unions to serve their own interests—how long and what hours members shall work, what work they shall do, and what pay they shall receive" (R. 672). Wages,

hours and working conditions, not suppression of commercial competition in the sale of fresh meat after 6:00 p.m., is its sole orientation.

The court below would drain this determination of its relevance by its *ipse dixit* that the "rights of employees" on the question of hours is confined to "the number of hours per day that any one shall be required to work . . ." (R. 694). According to this thesis, while employees may insist that they shall not work longer than a particular number of hours during a day, they have no self-protective interest in whether they shall work at night, through midnight or the dawn, on Sundays, or on holidays. The practical import is readily discernible from the 33 stores operated by Jewel outside the Chicago area, where no limitation upon market operating hours exists: two stores operate the meat department to 11:00 p.m., eight stores operate the meat department six nights per week to 9:00 p.m. Monday through Saturday, and seven stores operate the meat department on Sundays (*supra*, pp. 46-47). Adoption of the view of the court below means that employees cannot protest working on week days to 11:00 P.M., working on Saturdays after 6:00 P.M., or working on Sundays. The court below disdains as an "emotionally" expressed appeal the position that "union butchers should be given an opportunity to be with their children on Friday evenings . . ." (R. 695-696). And, since the butchers cannot protest the parts of the day or the days of the week they shall work, it is difficult to understand by what logic the court below grants them the right to protest the number of required hours of work per day.

The court below justifies its conclusion upon the ground that the determination of the hours that a place of business shall be open is a managerial prerogative to be exercised exclusively by the proprietor. Its thinking can be gleaned from the phrases it employed to express this view: "responsibilities resting upon a proprietor," "proprietary functions," "the judgment of the owner of the

business," "the prerogatives of the employer," his "inherent proprietary rights," the "proprietary function which an employer has the exclusive right to determine" (R. 694-695). The employees can have no say, therefore, in determining the parts of the day or the days of the week that they shall work because this would interfere with the employer's prerogative to decide for himself when his business shall be open. The essence of this view is that an operational decision by management must be given exclusive dominion notwithstanding its detrimental impact upon the working welfare of the employees.

This view is not new to the court below, and it has been expressly disapproved by this Court. *Railroad Telegraphers v. Chicago and Northwestern R. Co.*, 362 U.S. 330, reversing, 264 F.2d 254 (C.A. 7). In the latter case the union contested the employer's decision to abandon or consolidate unnecessary railroad stations because it would adversely affect the employment of telegraphers. The court below held that the union's demand that no position "will be abolished except by agreement between the Carrier and the Organization" was outside the valid scope of bargainable issues. 264 F.2d at 256, 260. And this for the reason that the "proposed contract change in the case before us represents an attempt to usurp legitimate managerial prerogative in the exercise of business judgment with respect to the most economical and efficient conduct of its operations" (*id.* at 259). This earlier expressed monarchical concept of absolute managerial prerogative—highlighted in this case by the anachronistic advertence to the employer's role "as master in the master and servant relationship" (R. 695)—underpins the present decision as well.

But this Court disapproved. Addressing itself precisely to the claim of usurpation of managerial prerogative, and observing that at issue was "the union's effort to negotiate about the job security of its members," this Court stated that: "We cannot agree with the Court of Appeals.



... It is too late now to argue that employees can have no collective voice to influence railroads to act in a way that will preserve the interests of the employees as well as the interests of the railroad and the public at large." 362 U.S. at 336, 338.

Faithful to this Court's decision in *Chicago and North Western*, the District Court explicitly drew on it to support its conclusion. After quoting from this Court's opinion, the District Court explained that: "Under this rationale, since the record here shows that night meat sales, even in self-service markets, require as a matter of practical operation the services of either butchers or other employees, the unions' insistence on the restriction to protect their work and job security, should be deemed a proper labor goal, and in no way a usurpation of managerial prerogative. Therefore, that decision further substantiates the conclusion that the marketing hour restriction here, in protecting butchers against night hours and a loss of work is within the labor exemption of the Sherman Act" (R. 675).

Similarly, strongly influenced by this Court's rationale in *Chicago and North Western*, the National Labor Relations Board has held that an employer's decision to subcontract a business operation is a mandatory subject of collective bargaining,<sup>13</sup> rejecting the dissenting position that whether to end or continue a business operation is "a managerial determination, and, therefore, a prerogative exercisable without negotiation."<sup>14</sup> Business functions and workers' protections must be balanced. *John Wiley & Sons v. Livingston*, 376 U.S. 543, 549. Even in the case of a union's stipulated violation of the antitrust laws, this

<sup>13</sup> *Town & Country Mfg. Co.*, 136 NLRB 1022, enforced, 316 F. 2d 846 (C.A. 5); *Fibreboard Paper Products Corp.*, 138 NLRB 550, enforced, 322 F. 2d 411 (C.A.D.C.), cert. granted, 375 U.S. 963.

<sup>14</sup> 136 NLRB at 1033.

Court has carefully observed that the redress it upheld against the offending union did not impair any interest the union had in "job or wage competition or economic interrelationship of any kind. . ." *Los Angeles Meat and Provision Drivers Union v. United States*, 371 U.S. 94, 103. "To believe that labor union interests may not properly extend beyond mere direct job and wage competition is to ignore not only economic and social realities so obvious as not to need mention, but also the graphic lessons of American labor union history." *Id.* at 104, concurring opinion, Mr. Justice Goldberg.

There is in truth no labor standard which cannot be expressed as an indispensable constituent of managerial dominion. Labor cost is a prime determinant of price policy; work load and product output go together; whether and when men will work underlies production scheduling. To invoke so-called managerial prerogative as a basis of decision is therefore question-begging. For it assumes that the employer's interest should be accorded priority. One can with equal propriety begin with the assumption that the employees' interest is entitled to precedence. There is no *a priori* basis for preferring one over the other, and a choice between the two is necessarily based on a value judgment. In this case to subordinate the employees' interest in when they shall work to the employer's interest in when his business shall be open is obviously to opt among rival notions of the good life. The choice is no less real because a judge makes it in the name of managerial prerogative.

But for a judge to make such a choice is incompatible with the institution of collective bargaining. Its genius is that it commits the composition of competing values to private decision and not to governmental determination either by the judiciary or other officialdom. National labor policy puts its faith in "the practice and procedure of free and private collective bargaining" (S. Rep. No. 105, 80th Cong., 1st Sess., 8, in 1 Leg. Hist. LMRA 414); "Gov-

ernment decisions should not be substituted for free agreement" (*id.* at 2, in *id.* at 408); the making of agreements is not to be trammelled by "governmental supervision of their terms" (S. Rep. No. 573, 74th Cong., 1st Sess., 12.) "... Congress intended that the parties should have wide latitude in their negotiations, unrestricted by any governmental power to regulate the substantive solution of their differences." *N.L.R.B. v. Insurance Agents' International Union*, 361 U.S. 477, 488. A negotiator is free to push his view whether or not it is "rightly or wrongly" held. *Local 24, Teamsters v. Oliver*, 358 U.S. 283, 294. And protected recourse to concerted activity to back a position is not dependent on the "wisdom or unwisdom of the men, their justification or lack of it" (*N.L.R.B. v. Mackay Radio & Telegraph Co.*, 370 U.S. 9, 16); "the reasonableness of workers' decisions" is not the criterion (*N.L.R.B. v. Washington Aluminum Co.*, 370 U.S. 9, 16). Private autonomy is thus the essence of the system. To intrude into it a judicial judgment in favor of the employer's interest in the name of managerial prerogative puts the "Government's thumb on the scales"<sup>15</sup> incompatibly with free and private collective bargaining. For when the judge weighs the competing values he takes from the parties their right to strike their own balance.

In short, regulation of market operating hours by collective bargaining agreement cannot be deprived of its labor attributes by invoking the talisman of "managerial prerogative." It is no different from, and no less within the ambit of collective bargaining than, a contest over the abandonment or consolidation of unnecessary railroad stations (*Railroad Telegraphers v. Ch. & N.W. R. Co.*, 362 U.S. 330); the minimum equipment rental of leased vehicles (*Local 24, Teamsters v. Oliver*, 358 U.S. 283, 362 U.S. 605); the sale and use of labor saving machinery (truck mixers) (*United States v. Hod Carriers*, 313 U.S. 539, affirming, 37 F. Supp. 191 (N.D. Ill.)); the use of recorded music sup-

<sup>15</sup> *American Communications Assn. v. Douds*, 339 U.S. 382, 401.

planting the services of live musicians (*United States v. American Federation of Musicians*, 318 U.S. 741, affirming, 47 F. Supp. 304 (N.D. Ill.)); in the ladies garment industry, "(1) Limitations on competition among contractors by restricting manufacturers' and jobbers' use of contractors, primarily through a contract-designation procedure, and by determining prices to be paid to contractors for their services, and (2) Restraints on production by members of the employer associations, resulting from contract limitations on the opening of additional plants or the acquisition of interests in other concerns producing women's sportswear" (*California Sportswear & Dress Assn.*, 54 FTC 835); and contracting out a business operation in preference to its performance with the employer's own equipment (*Fibreboard Paper Products Corp.*, 138 NLRB 550, enforced, 322 F. 2d 411 (C.A.D.C.), cert. granted, 375 U.S. 963; *Town & Country Mfg Co.*, 136 NLRB 1022, enforced, 316 F. 2d 846 (C.A. 5)).

Accordingly, as in *Local 24, Teamsters v. Oliver*, 358 U.S. 283, 294-295, it "is not necessary to attempt to set precise outside limits to the subject matter properly included within the scope of mandatory collective bargaining . . . to hold . . . that the obligation under § 8(d)" of the National Labor Relations Act on Jewel and the unions "to bargain collectively 'with respect to wages, hours, and other terms and conditions of employment' and to embody their understanding in 'a written contract incorporating any agreement reached,' found an expression" in the contractual limitation of market operating hours. "And certainly bargaining on this subject through their representatives was a right of the employees protected by § 7 of the Act." Far from being within the scope, much less the prohibition, of the Sherman Act, the workers' activity was within the protected ambit of the National Labor Relations Act. How can it be otherwise when at bottom the controversy is about whether or not the men should work at night?

### **III. REGULATION OF MARKET OPERATING HOURS BY COLLECTIVE BARGAINING AGREEMENT IS WITHIN THE LABOR EXEMPTION OF THE SHERMAN ACT.**

The second branch of our argument proceeds on the assumption that market operating hours is not within the scope of mandatory collective bargaining but is to be treated as an aspect of commercial competition which, but for the applicability of the labor exemption, would be subject to the rule that a trade restraint is within the prohibition of the Sherman Act if it unreasonably restricts mercantile rivalry. On this hypothesis, viewing the labor activity through the lens of the labor exemption of the Sherman Act, the question is whether regulation of market operating hours by collective bargaining agreement is immune from antitrust proscription because it is the product of the unions' efforts acting on their own in their self-interest free of aid to a business men's combination.

#### **A. The Complaint Rests Upon an Allegation of Conspiracy Between Associated and the Unions; That Allegation Was Indispensable to State a Claim Under the Antitrust Laws Against the Unions; and That Allegation Was Not Only Unproved But Disproved.**

Union activity conducted by a labor organization in the self-interest of the employees it represents to attain or maintain conditions deemed by the union relevant to the employees' working welfare is exempt from the Sherman Act. *United States v. Hutcheson*, 312 U.S. 219. Immunity exists "So long as a union acts in its self-interest and does not combine with non-labor groups. . . ." *Id.* at 232. The exemption is inapplicable only when, and to the extent that, the union aids a combination of business men themselves united in a plan which offends the antitrust laws. *Allen-Bradley Co. v. Local Union No. 3, IBEW*, 325 U.S. 797. The heart of the qualification upon the labor exemption is expressed in the following passages from *Allen-Bradley* (*id.* at 808-809, 810):

... we think Congress never intended that unions could, consistently with the Sherman Act, aid non-



*labor groups to create business monopolies and to control the marketing of goods and services.*

Employers and the union did here make bargaining agreements in which the employers agreed not to buy goods manufactured by companies which did not employ the members of Local No. 3. *We may assume that such an agreement standing alone would not have violated the Sherman Act. But it did not stand alone.* It was but one element in a far larger program in which *contractors and manufacturers united with one another* to monopolize all the business in New York City, to bar all other business from that area, and to charge the public prices above the competitive level. It is true that victory of the union in its disputes, even had the union acted alone, might have added to the cost of goods, or might have resulted in individual refusals of all of their employers to buy electrical equipment not made by Local No. 3. So far as the union might have achieved this result *acting alone*, it would have been the natural consequences of labor union activities exempted by the Clayton Act from the coverage of the Sherman Act. [Citation omitted.] But when the unions participated *with a combination of business men* who had complete power to eliminate all competition among themselves and to prevent all competition from others, a situation was created not included within the exemptions of the Clayton and Norris-LaGuardia Acts.

[We find] no purpose of Congress to immunize labor unions who *aid and abet manufacturers and traders in violating the Sherman Act.* . . .

Our holding means that the same labor union activities may or may not be in violation of the Sherman Act, *dependent upon whether the union acts alone or in combination with business groups.* [Emphasis supplied.]

The labor exemption is thus inapplicable only if three factors are present: (1) there must exist "a combination of business men"—a program in which business men are

"united with one another"; (2) the activity of that combination of business men must of itself offend the antitrust laws; and (3) the labor organization must aid and abet that combination of business men in violating the antitrust laws. In 1947, in deliberating on the Taft-Hartley amendments, and in 1959, in deliberating on the Landrum-Griffin amendments, Congress considered and voted down removal of the labor exemption.<sup>16</sup>

<sup>16</sup> In 1947, the House bill, as reported and passed, amended Section 6 of the Clayton Act to provide that (H.R. 3020, 80th Cong., 1st Sess., Sec. 301(b), in 1 Leg. Hist. LMRA 93-94, 220-221):

... it shall not be within the legitimate objects of labor organizations or the officers, representatives, or members thereof, to make any contract, or to engage in any combination or conspiracy, in restraint of commerce, if one of the purposes or a necessary effect of such contract, combination, or conspiracy is to join or combine with any person to fix prices, allocate customers, restrict production, distribution, or competition, or impose restrictions or conditions, upon the purchase, sale, or use of any product, material, machine, or equipment. . . .

Similarly, Senators Taft, Ball, Donnell, and Jenner proposed that the Clayton Act and the Norris LaGuardia Act (S. Rep. No. 105, 80th Cong., 1st Sess., 55-56, in 1 Leg. Hist. LMRA 461-462):

shall not be applicable . . . in respect to any contract, combination, or conspiracy, in restraint of commerce; to which a labor organization is a party, if one of the purposes of such contract, combination, or conspiracy is to fix prices, allocate customers, restrict production, distribution, or competition, or impose restrictions or conditions upon the purchase, sale, or use of any material, machines or equipment.

In introducing this amendment, Senator Ball explained, "That language is designed to correct the interpretation of the Norris-LaGuardia and Clayton Acts made by the Supreme Court in the Hutheson case [312 U.S. 219], and a number of other cases brought by former Assistant Attorney General Thurman Arnold, when he attempted to break up monopolistic practices on the part of labor unions, sometimes acting on their own, sometimes in conspiracy with employers. They were engaging in all kind of price-fixing. They were attempting to determine, on their own respon-

Congress has thus confirmed its continuing vitality.<sup>17</sup>

In this case, obedient to settled law, Jewel framed its complaint to plead a case outside the scope of the labor exemption. To show a combination of business men united in an antitrust violation, the complaint alleged a mercantile conspiracy to suppress commercial competition in the sale of fresh meat after 6:00 p.m. among Associated, its mem-

sibility, what products should be used in industry, what kind of machines, and what products the public should be entitled to buy." 93 Cong. Rec. 4837, in 2 Leg. Hist. LMRA 1354. The Senate defeated the proposed amendment. 93 Cong. Rec. 4847, in 2 Leg. Hist. LMRA 1370. The conference agreement thereafter rejected the House bill's imposition of antitrust restrictions upon labor organizations.

In 1959, the House voted down an amendment of the National Labor Relations Act providing that (105 Cong. Rec. 15853, in 2 Leg. Hist. LMRDA 1685):

Nothing contained in this Act shall be deemed to make lawful any contract, combination, or conspiracy in restraint of trade or commerce entered into between two or more labor organizations (whether or not affiliated with the same national or international labor organization) or between any individual labor organization and any employer or other person or persons, which contract, combination, or conspiracy if entered into by persons other than labor organizations would be in violation of the antitrust laws. Nothing contained in this Act or in the Act of March 23, 1932 (29 U.S.C. 101) shall be deemed to exempt from the application of the antitrust laws of the United States or of any State or territory thereof any employer, labor organization, or other person who becomes a party to or engages or participates in any such contract, combination, or conspiracy in restraint of trade or commerce: *Provided, however*, that this section shall not be construed to limit or restrict the right to strike except as otherwise provided in this Act.

See also, 105 Cong. Rec. 12136-37, 15532-35, in 2 Leg. Hist. LMRDA 1507-08, 1569-71.

<sup>17</sup> *Gullet Gin Co. v. N.L.R.B.*, 340 U.S. 361, 365-366; *Queensboro Farm Products v. Wickard*, 137 F. 2d 969, 977 (C.A. 2).

bers, and its secretary and treasurer; and to draw the unions into this orbit, the complaint averred that they abetted Associated's alleged scheme as co-conspirators. Thus, paragraph 15 first alleged "an unlawful combination and conspiracy to suppress competition among retail meat markets in the Chicago area and to wholly prevent the sale of meat and meat products before 9:00 A.M. or after 6:00 P.M. Mondays through Saturdays" (R. 22); paragraph 16(d) then alleged that the "co-conspirator members of defendant Associated have agreed among themselves to insist that all collective bargaining agreements" shall contain limitations on market operating hours; paragraph 16(e) alleged that "Associated, its members and officers have conspired and agreed with the other defendants [the unions]" to this end; paragraph 16(f) alleged that the "defendant unions, their officers and members have acted as the enforcing agent of the conspiracy" (R. 23). Paragraph 18 referred to "defendant unions, their officers and members, *conspiring* together with Associated, Bromann, and Associated's employer members" (R. 23); paragraph 19 referred to the insistence upon the limitation of market operating hours by "defendant Associated and its *co-conspirator members* and Bromann and the defendant unions, their officers and members" (R. 24); and paragraph 20 stated that "In furtherance of *this conspiracy* . . . Defendant Associated refused to enter into an agreement permitting night openings and the defendant unions supported and abetted it in that refusal" (R. 24) (emphasis supplied).

A conspiracy between Associated and the unions was thus the centerpiece of the complaint. The Court of Appeals, the District Court, and Jewel united in that reading. In dismissing the complaint against Associated and Bromann at the close of Jewel's case, the District Court observed that "the gist of the complaint is that there is and has been a *conspiracy* among and between Bromann, Associated, and the defendant Unions" (R. 683, emphasis sup-

plied). The District Court had similarly observed, in its pretrial opinion denying the unions' initial motion to dismiss, the complaint charges that "defendant union[s] and their officers conspired with Associated Food Retailers of Greater Chicago, Inc., . . . to suppress competition among retail meat markets in the Chicago area, and to prevent the sale of fresh meats . . . before 9 A.M. or after 6 P.M. Mondays through Saturdays. . ." (R. 58, emphasis supplied). In affirming the District Court's ruling on interlocutory appeal, the court below likewise recognized that an "alleged combination or conspiracy" among Associated, its members, and Bromann, aided and abetted by the unions as co-conspirators, was at the heart of the complaint, observing that the "alleged conspiracy" of business men could not be saved "by making the union a co-conspirator. . . ." 274 F. 2d at 220, 222. And, in its brief to the court below on the first appeal, Jewel summarized its own complaint in identical fashion: "The Complaint here is made against, and relief is sought from the union's actions, not alone, but in combination with Associated Food Retailers in a conspiracy to restrain commerce" (p. 63); the "complaint plainly alleges a conspiracy between the defendant employer association and the unions to achieve the employer conspirators' desire not to face plaintiff's competition" (p. 50, see also, pp. 1-2, 5-6, 9, 10, 56).

In short, the complaint made Associated the villain of the piece in order to supply the essential element of a labor-assisted business men's conspiracy without which it was not possible to state an antitrust claim against the unions. But, as the District Court found, the alleged conspiracy "failed to withstand the 'crucible of trial'" (R. 670). It dismissed the complaint against Associated and Bromann at the close of Jewel's case because "the record was devoid of any evidence to support a finding of conspiracy" (R. 670, 683-684, 658). It found that, "realistically speaking, there is absent any evidence showing Bromann or Asso-



ciated, or both, conspired with defendant Unions in forcing the restrictive clause upon Jewel" (R. 684).

The lack of evidence of conspiracy at the close of Jewel's case, was confirmed by positive evidence disproving conspiracy at the close of all the evidence. The District Court found that "the marketing hour restriction originated as a result of the Union's strike against the 81 hour, 7 day work week in 1919, long before plaintiff [Jewel] sold meat or Associated was organized" (R. 671). And it further found that (R. 670):

The record showed only that Bromann, on behalf of Associated, which represented some 1,000 individual and independent food stores, dealt with the unions at arm's length. At no time did he receive a direction to demand a 6 P.M. closing; nor did he make any such demand. On the contrary, Associated, through Bromann, joined in the all-employer offer of November 15, 1957, demanding the elimination of the restriction on night marketing, and specifically requested that change from the union representative at a sub-committee meeting [*supra*, pp. 28-29]. Even Vorbeck's letter of October 1, 1961, to his company, stated that Associated did not oppose night work, but that some opposition came from other chains [*supra*, pp. 38-39]. This fluctuating opposition by some employers to night operations because of their high cost is hardly tantamount to a conspiracy with the unions. Hence, any attempt to reassert that theory must fail.

Other factors negate a conspiracy. George P. Kokalis, a chain store operator who in 1957 favored night operations (*supra*, p. 51, n. 9), testified that "Bromann was in accord" with night operations (R. 422). In the 1959 and 1961 negotiations Associated's position on night operations was identical with that of all employers (*supra*, pp. 34-35, 36-37, 38-39), if not indeed more favorably inclined towards night operations in 1961 than most (*supra*, pp. 38-39). The members of Associated have no mercantile characteristics different from other merchants (*supra*, p. 10).

And Jewel's representative himself described Bromann as an "able negotiator" who would be "acceptable" to the entire employer group as its spokesman (*supra*, p. 21).

With the finding that Associated and Bromann engaged in no conspiracy, there disappeared the sole conspiracy of business men alleged in the complaint, and as the necessary consequence there vanished as well any basis for a claim that the unions violated the antitrust laws. For the unions cannot be held as co-conspirators in a conspiracy which does not exist. And that should have been the end of this case.

**B. The Containment of the Market Operating Hours Provision in a Collective Bargaining Agreement Which Is the Consummation of Joint Negotiations Is Not a Sufficient Basis to Remove the Applicability of the Labor Exemption.**

Deprived of the fact of a business men's conspiracy as a predicate for finding an antitrust violation, the court below broke new ground. It held that the containment of the limitation upon market operating hours in a collective bargaining agreement which is the consummation of joint negotiations of itself establishes that it is the product of an illicit business men-union combination (R. 693, 694, 697). In a verbal miasma, the court below stated that "the unions, Associated Food Retailers and Bromann, its secretary, entered into a combination or agreement, which constituted a conspiracy"; it erroneously attributed to this Court the use of the "words 'conspiracy' and 'contract' interchangeably";<sup>18</sup> and it concluded that "Whether it be called an

<sup>18</sup> Cited to support this conclusion, *United Brotherhood of Carpenters v. United States*, 330 U.S. 395, establishes the opposite, for it is explicitly premised on *Allen Bradley*, this Court stating that "Since these cases were taken the important question of the applicability of the Sherman Act to a *conspiracy* between labor union and business groups has been decided by us. We held that such a *conspiracy* to restrain trade violated the Sherman Act" (*id.* at 400, emphasis supplied).

agreement, a contract or a conspiracy, is immaterial" (R. 697). Since the only identifiable element in this new theory is common participation in joint negotiations, its reach is not confined to Associated but engulfs all employers engaged in group bargaining. Its enormity is evident from the District Court's findings that the employer group and the union group each "formulates its position independently" (R. 664-665), and that the limitation upon market operating hours "was imposed after arm's length bargaining . . ." (R. 672). And the new theory destroys the labor exemption. For unions operate through agreements reached as a result of collective bargaining, and if that act suffices to establish forbidden concert with a non-labor group, immunity vanishes.

At stake, therefore, is the labor exemption itself. For it cannot survive if it is inapplicable even though, as we now show, nothing appears except an aboveboard collective bargaining agreement which is the product of joint negotiations conducted at arm's length.<sup>19</sup>

<sup>19</sup> Untenable on its merits, the new theory is so gross a shift from the complaint that "elemental concepts of procedural due process" bar its adoption. *N.L.R.B. v. H.E. Fletcher Co.*, 298 F. 2d 594, 601 (C.A. 1). Jewel never moved to amend its complaint to incorporate the new theory. It declined to commit itself to this theory in argument at the close of its case (Tr. 609). It did not fully articulate it until its post-trial brief after all the evidence was in. It therefore prevailed on a claim which was procedurally barred because not alleged, not the subject of discovery, and not tried. *Ibid.*; *Meadow Gold Products Co. v. Wright*, 278 F. 2d 867, 868-869 (C.A.D.C.); *Cr. & O. Ry. Co. v. Newman*, 243 F. 2d 804, 812-813 (C.A. 6); *Bullen v. deBretteville*, 239 F. 2d 824, 833-834 (C.A. 9), cert. denied, 353 U.S. 947; *United States v. Ahtanum Irr. District*, 124 F. Supp. 818, 827 (E.D. Wash.). It is ironic that, to survive a motion to dismiss the complaint, Jewel insisted that it was proceeding on the basis of "a conspiracy between the defendant employer association and the unions" (*supra*, p. 86), but that to prevail after trial it urged that it needed to show only that the "union defendants and various employers" engaged "in jointly negotiating the contract . . ." (Jewel brief below, p. 29, see also, pp. 14, 28, 29, 39, 62-64).

1. **Bargaining is at arm's length and the agreement reached aboveboard.**

The limitation upon market operating hours, designed and maintained by the unions to serve the working welfare of the employees they represent, is achieved solely through the unions' exertion of their own bargaining power. The limitation was born in a strike in 1949 (*supra*, p. 14). It was sheltered by "an overwhelming strike vote against night work" in 1957 (R. 672, *supra*, p. 33). It is maintained by union strength alone.

Marketing operating hours is but one of numerous issues identically hammered out at the bargaining table. Negotiations are joint but bargaining is at arm's length. Joint negotiations were instituted in 1941 by the unions in order to strengthen their bargaining position (*supra*, p. 18). The unions as a group and the employers as a group formulate their positions independently of each other. On the union side, the unions' initial demands are based on a preliminary survey of the members' wishes; in the course of negotiations the wishes of the members continue to be consulted; as negotiations go on the union representatives caucus from time to time to determine their bargaining positions; and any settlement reached is tentative until approved by the members at contract ratification meetings (*supra*, pp. 16-18).<sup>20</sup> On the employers' side the employers meet in advance of negotiations to explore the objec-

<sup>20</sup> The minute detail in which the members are apprised of the course of negotiations prior to their vote upon the tentative settlement is shown in the minutes of the 1957, 1959, and 1961 contract ratification meetings of Local 546. These minutes were offered into evidence but not received and appear in the record as offers of proof (R. 592-593, 595-596, 598-599, 177x-254x). The minutes should be considered for they are competent to prove what transpired at the meetings. 4 Wigmore, Evidence, § 1074, p. 101(3) (3d ed.); 32 Corpus Jur. 2d, Evidence, § 701; *Lano v. Rochester Germicide Co.*, 113 N.W. 2d 460, 464; 44 CCH Lab. Cas. ¶ 17, 420, p. 26, 062 (Minn. Sup. Ct.).

tives they seek in negotiations, and in the course of negotiations they caucus from time to time to determine their bargaining positions (*ibid.*). In negotiations an employer chairman and a union chairman act as the spokesmen for their respective groups (*ibid.*), and, as expressed by Jewel's counsel in a leading question, "You would horse-trade back and forth" (R. 140). As the consummation of negotiations the employers and unions sign separate but identical agreements (*supra*, p. 18). There is thus nothing in the conduct of negotiations which remotely suggests business men-union connivance.

Nor is there the slightest basis for Jewel's oblique suggestion that, unlike other bargaining issues, the unions' position upon market operating hours is determined by and obedient to the position of the majority of the employers on the subject. The entire record refutes the claim. The *unanimous* employer proposal of November 15, 1957 for night operation was rejected by the unions (*supra*, pp. 28-30). The *unanimous* employer position in the 1955 negotiations for removal of all restrictions on market operating hours did not win the unions' assent (*supra*, pp. 34-35). The *unanimous* employer proposal of September 12, 1961 to commit market operating hours to the employers' discretion did not achieve the unions' concurrence (*supra*, pp. 36-37). Nor did it avail the employers that in the 1961 negotiations the "principal demands which employers" sought included "complete removal from the contract of all restrictions on market operating hours" (*supra*, p. 39). It is therefore not surprising, as the following question and answer shows, that Jewel's counsel was unable to lead R. Emmett Kelly, the unions' chief spokesman, into an admission that the employers' position determined the unions' position on market operating hours (R. 132):

Q. Now, I will ask you if it is fair to summarize that to say that you were telling your membership that this whole controversy really is a controversy



between Jewel on the one hand and the rest of the industry and your affiliated locals on the other, and if it should be that we get night operations, Jewel is responsible for breaking up the industry pattern; isn't that correct?

A. Mr. Christensen, on the first part of your question, may I have it repeated, please?

MR. CHRISTENSEN: Certainly.

(Question read.)

BY THE WITNESS:

A. No, sir, that is not correct.

The fact is that at no time has any union representative had any agreement or understanding with any employer to insist on maintaining opposition to night marketing hours; the position of the union representatives on the subject is based exclusively upon what they regard to be the best self-interest of the members (*supra*, p. 55).

And the fact also is that the only possible difference between Jewel's position on market operating hours and that of the other employers is that Jewel persists in seeking the unions' concurrence in its removal after the other employers have recognized the futility of the quest and have turned to concentrating on those of their demands which are realistically attainable. Were it true that the position of a majority of the employers on market operating hours is determinative of the position of the unions on the subject there would not now be a limitation upon market operating hours. But the truth is the other way. The unions are hardly likely to give up 45 years of history on the say-so of any number of employers, whether one, a minority, a majority, or all.

Also specious is Jewel's pretense that it is the sole steadfast crusader among the employers in striving to lift the market operating hours limitation. Its self-righteousness is belied by its own conduct at the close of the 1957

negotiations. For, after first asking R. Emmett Kelly to submit to the members Jewel's proposal of November 22, 1957 which included provision for night operations and female wrappers (*supra*, p. 31), it then requested that, if the members rejected that proposal, the same proposal should be submitted to the members but this time with night operation *deleted* and female wrappers *retained* (*supra*, p. 32). Thus, in choosing between the two, Jewel gave priority to female wrappers over night operations.

Finally, Jewel's position on the issue of health and welfare at the close of the 1961 negotiations exposes the fallacy of its notion that an employer is victimized by a business men-union combination directed at it if the position it maintains is contrary to that of the other negotiators. At the close of the 1961 negotiations on November 16, unlike all other employers, Jewel persisted in its position that the participation of the employees in the employer's individual health and welfare plan should not be cost-free to the employees (*supra*, pp. 43-44), and it did not yield this position and assent to the industry settlement until January 2, 1962 (*supra*, p. 45). Jewel can hardly validly say that because its position on health and welfare was adverse to that of all the other employers the accord reached on the subject by joint negotiations was the product of an illicit business men-union combination. And what Jewel cannot validly say when the subject is health and welfare it cannot validly say just because the subject is market operating hours. Jewel indeed suffers from a self-confessed corporate paranoia that anyone who differs from it conspires against it (R. 379-380).

Quoting from *Interstate Circuit v. United States*, 306 U.S. 208, 227, the court below invokes the doctrine of "conscious parallelism" to support its conclusion (R. 697). There is, first, no factual predicate for application of the doctrine. For the short of it is that while all employers,

including Associated, entered into the agreement limiting market operating hours, none of the employers, including Associated, did so in any wise for reasons which paralleled the unions, but indeed actively sought to dissuade the unions from their position. Furthermore, whenever a union deals with more than one employer in the same industry, it may well be that a union demand is unopposed by some employers and opposed by others. But nothing is inferable from the concord with some and the discord with others. For the reasons for the union's demand, the resistance by some employers, and the acquiescence by other employers can be totally disparate. An infinite variety of strain and stress enters into the makeup of bargaining positions.<sup>21</sup> Included within the causes of variegation are differing appraisal of economic self-interest, conflicting notions of the room for adjustment, dissimilar evaluation of the willingness and capacity to call and take a strike, the influence of internal political pressure (within both the union and corporate complex), and the human elements of pride, prestige, arrogance, stupidity, and miscalculation. "The difficulty is that solutions often require such a delicate balancing of conflicting interests—and interests within interests—that even a computer would have difficulty in handling all the variables."<sup>22</sup> A common position therefore by no means denotes common reasons, common interests, or common conduct. And a union need not be at loggerheads with all the employers in order to establish that it is acting independently of all employers.

Parallel action of itself, even were it shown to exist, does not therefore import concert. This Court, as it has explained, "has never held that proof of parallel business behavior conclusively establishes agreement or, phrased

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<sup>21</sup> See Fleming, *New Challenges For Collective Bargaining*, 1964 Wis. L. Rev. 426, 432-444.

<sup>22</sup> *Id.* at 433.

differently, that such behavior itself constitutes a Sherman Act offense"; "conscious parallelism" has not yet read conspiracy out of the Sherman Act entirely." *Theatre Enterprises, Inc. v. Paramount Film Distributing Corp.*, 346 U.S. 537, 541. In this case, based on the findings that the employer group and the union group each "formulates its position independently" (R. 664-665) and that agreement was reached "after arm's length bargaining" (R. 672), it mocks the meaning of "conscious parallelism" to infer illicit concert. Concert is simply not inferable from parallel action resulting from independent decision.<sup>23</sup>

The bankruptcy of conjuring concert is finally shown by the statement of the court below that Associated and the unions interposed a "common defense" to the conspiracy charge (R. 697). A joint plea by persons that they are not conspirators can hardly be traduced into proof that they are. Especially is this so when all that is relied upon is "Associated's motion," granted by the court below, that "the Unions' brief stand as the brief of Associated and Bromann, its secretary". (R. 697, n. 5). The court below neglects to mention that in consenting to the grant of the motion the unions were at pains to state that "appellees in No. 14196 [the unions] wish it to be clearly and distinctly understood that their attorneys do not represent appellees in No. 14119 [Associated and Bromann], that the brief for appellees in No. 14196 is not being prepared in cooperation or consultation with appellees in No. 14119 or the latter's

<sup>23</sup> *Winchester Theater Co. v. Paramount Film Dist. Corp.*, 324 F. 2d 652, 653-654 (C.A. 1); *Independent Iron Works v. United States Steel Corp.*, 322 F. 2d 656, 661 (C.A. 9); *Gold Fuel Service v. Esso Standard Oil Co.*, 306 F. 2d 61, 64 (C.A. 3); *Delaware Valley Marine Supply Co. v. American Tobacco Co.*, 297 F. 2d 199, 202-203 (C.A. 3), cert. denied, 369 U.S. 839. See also, Report of Atty. Gen. Natl. Comm. to Study the Antitrust Laws, 36-42 (1955); Turner, *The Definition of Agreement Under The Sherman Act: Conscious Parallelism and Refusals to Deal*, 75 Harv. L. Rev. 655 (1962).

attorneys, and that appellees in No. 14196 are in no wise associated with appellees in No. 14119 in the conduct of this litigation" (R. 688-689). It is a measure of the approach of the court below that it recites the motion but not the contents of the consent. And it is a measure of the error into which such undisciplined concert-conjuring can lead that, as stated by Associated and Bromann in their petition for a writ of certiorari, "all that" their reliance on the unions' brief "in truth evidenced . . . is Associated's and Bromann's impecunity. Unlike either the unions or respondent, who have ample financial means to conduct protracted and expensive litigation, Associated and Bromann simply do not have the wherewithal necessary to wage legal warfare."<sup>24</sup> But it would make no difference even if there were thorough concert in presenting a common defense. The "Sherman Act does not prohibit two or more persons from associating together in an attempt to persuade the legislature or the executive to take particular action. . . ." *Eastern Railroad Presidents Conference v. Noerr Motor Freight*, 375 U.S. 127, 136. Nor, we add, the judiciary.

In sum, all employers, including Jewel, yielded to the unions' demand on market operating hours and in compliance with it incorporated the limitation into the collective bargaining agreements. The surrender of the employers to the unions' demand can hardly be equated with connivance of the employers with the unions. Capitulation is not conspiracy. This is no case "where a labor organization is used by a combination of those engaged in an industry as the means or instrument for suppressing competition or fixing prices." *Philadelphia Record Co. v. Manufacturing Photo-Engravers Assn.*, 155 F. 2d 799, 803 (C.A. 3). On the contrary, as the District Court found, the "facts and circumstances are inimical to plaintiff's theory

<sup>24</sup> P. 13, No. 321, October Term 1964, *Associated Food Retailers, et al. v. Jewel Tea Co.*



that the unions insisted on the restriction as the tool of the employer group and at their behest" (R. 672).

2. **The labor exemption is destroyed if a bargaining agreement reached by joint negotiations alone suffices to remove its applicability.**

The position adopted by the court below thus emerges stark and bare. It would find a business men-union combination—a conspiracy among and between them—simply in the fact of agreement reached as a result of common participation of employers and unions in joint negotiations. That position can hardly survive its statement. For it is in basic conflict with the concept of multi-party negotiations and the uniformity of agreements which naturally flows from it.

As this Court has held, the National Labor Relations Act expressly recognizes the legitimate interest "in preserving multi-employer bargaining as a means of bargaining on an equal basis with a large union and avoiding the competitive disadvantages resulting from nonuniform contractual terms" (*N.L.R.B. v. Truck Drivers Local Union No. 449*, 353 U.S. 87, 96); "This basis of bargaining has had its greatest expansion since enactment of the Wagner Act because employers have sought through group bargaining to match increased union strength" (*id.* at 94-95); and "Congress refused to interfere with such bargaining because there was cogent evidence that in many industries the multi-employer bargaining basis was a vital factor in the effectuation of the national policy of promoting labor peace through strengthened collective bargaining" (*id.* at 95). And since "avoiding the competitive disadvantages resulting from nonuniform contractual terms" is the very reason for being of multi-employer bargaining, it can hardly be a valid objection that identical agreements are an object and consequence of joint negotiations. Indeed, Jewel's own position is that no employer should have more favorable terms than any other employer

(*supra*, pp. 12-13). Uniformity in this field is fully consistent with the antitrust laws. *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 503-504 and n. 24, 507, n. 25; National Labor Relations Act, § 1, ¶ 2. Accordingly, joint negotiation and uniform collective bargaining agreements are not and do not evidence combinations of businessmen leagued with a union engaged in conduct violative of the antitrust laws. *California Sportswear & Dress Association, Inc.*, 54 FTC 835, 885-886; *Meier & Pohlman Furniture Co. v. Gibbons*, 233 F.2d 296, 302 (C.A. 8), cert. denied, 352 U.S. 879; *Adams Dairy Co. v. St. Louis Dairy Co.*, 260 F. 2d 46, 49 C.A. 8; *Rossi v. McCloskey & Co.*, 149 F. Supp. 639, 640 (D.C.E.D. Pa.); *Cox, Labor and The Anti-Trust Laws — A Preliminary Analysis*, 104 Penn. L. Rev. 252, 271.

Another route reaches the same destination. In *Allen Bradley* this Court stated that we may assume that a bargaining agreement, "standing alone," would not violate the Sherman Act. 325 U.S. at 809. Forthright embracement of that assumption is inherent and inevitable granting the premise of decision in *Allen Bradley*. If the regulation of market operating hours is invalid at all, it would be so only because it is the product of activity by the unions to aid and abet business men in violating the antitrust laws. 325 U.S. at 801, 807, 808, 810. Any injunction against bargaining for, or striking to obtain, the marketing provision would have to be confined to "when such activities are carried on in combination and conspiracy with non-labor groups," and would not extend to "any of said activities when said activities are not in combination with non-labor groups . . ." *Allen Bradley v. Local Union No. 3, IBEW*, 164 F.2d 70, 75 (C.A. 2). This limitation of the injunction was required by the terms of this Court's remand in *Allen Bradley*, ordering that the injunction be confined to "only those prohibited activities in which the union engaged in combination 'with any . . . non-labor group . . .'" 325 U.S.

at 812. See also, *Schatte v. International Alliance*, 182 F.2d 158, 167 (C.A. 9), cert. denied, 340 U.S. 827; *Pevely Dairy Co. v. Milk Wagon Drivers Union Local 603*, 174 F. Supp. 229 (E.D. Mo. E.D.). Accordingly, under any circumstances, the antitrust laws leave the unions free, so long as they act independently of a non-labor group, to bargain and strike for the market operating hours provision. Any controversy concerning it would clearly be a labor dispute within the meaning of the Norris-LaGuardia Act (*Railroad Telegraphers v. Ch. & N.W. R. Co.*, 362 U.S. 330; *Aetna Freight Lines, Inc. v. Clayton*, 228 F.2d 385, 386-387 (C.A. 2), cert. denied, 351 U.S. 950); and the strike would hence not be enjoinable. As this Court held in *Hunt v. Crumbock*, 325 U.S. 821, 824:

It is not a violation of the Sherman Act for laborers in combination to refuse to work. They can sell or not sell their labor as they please, and upon such terms and conditions as they choose, without infringing the Antitrust laws. *Apex Hosiery v. Leader*, 310 U.S. 469, 502-503. A worker is privileged under congressional enactments, either acting alone or in concert with his fellow workers, to associate or to decline to associate with other workers, to accept, refuse to accept, or to terminate a relationship of employment, and his labor is not to be treated as "a commodity or article of commerce." Clayton Act, 38 Stat. 730, 731; Norris-LaGuardia Act, 47 Stat. 70; see also, *American Steel Foundries v. Tri-City Council*, 257 U.S. 184, 209.

And it would be stultifying to say that a provision for which a union may strike may not validly be incorporated in a collective bargaining agreement in lieu of settlement of the strike.<sup>25</sup>

The point can be sharpened. Assume that, instead of negotiating the limitation upon market operating hours

<sup>25</sup> Cox, *Labor And The Antitrust Laws—A Preliminary Analysis*, 104 Penn. L. Rev. 252, 271; Dodd, *The Supreme Court And Organized Labor, 1941-45*, 58 Harv. L. Rev. 1018, 1051.

and incorporating it in to the agreement, the unions unilaterally adopt the same limitation and announce that, as the butchers' condition of working for the employer, the prescribed marketing hours must be observed by the employer in the meat department. The standard would thus be determined exclusively by the unions and its enforcement secured solely by the withholding of labor. No possible antitrust violation would exist, for workers "can sell or not sell their labor as they please, and upon such terms and conditions as they choose, without infringing the Anti-trust laws." *Hunt v. Crumbach*, 325 U.S. 821, 824. This hypothetical situation—which in the instant case can readily be made into a reality—differs from the actual situation only in that, instead of unilaterally dictating the terms to the employers, the unions are willing to negotiate the terms and incorporate any ensuing accord into an agreement. It is surely not the point of the labor exemption that, instead of meeting and conferring in good faith with the employers concerning a union demand which affects them, the unions must engage in an incommunicado clubbing of the employers.

The gross shift from *Allen Bradley* indulged by the court below is further apparent from its direction to the District Court to enter "an injunction substantially as prayed in the complaint herein . . ." (R. 698). Paragraph 3 of the prayer would enjoin enforcement of any limitation upon market operating hours, and paragraph 4 would enjoin any strike or picketing "for the purpose of restricting plaintiff's hours of operation," with no qualification that either prohibition be confined to activity in concert with a non-labor group (R. 27). This blanket restraint is directly contrary to this Court's express edict in *Allen Bradley*.

In the realistic world in which the labor exemption must live, for this Court to say that labor activity is free of the Sherman Act when the union "acts alone" (325 U.S. at 810) of necessity means that a union may bargain and

strike and reach agreement in consummation of that activity. For if a union is not acting alone when it does that it generally cannot act at all. Put another way, an agreement secured by a union in fruition of collective bargaining, "with the right to strike at its core,"<sup>26</sup> is not the product of a conspiracy of business men to violate the antitrust laws aided by a union. Otherwise *Allen Bradley* has no meaning and the labor exemption is dead.

**C. The "Wisdom or Unwisdom, the Rightness or Wrongness, the Selfishness or Unselfishness" of the Unions' End Is Irrelevant to the Labor Exemption.**

The decision below is a throwback to the days preceding the Norris-LaGuardia Act and that Act's infusion of the labor exemption to the antitrust laws with its contemporary meaning. "The committee reports on the Norris-LaGuardia Act reveal that many of the injunctions which were considered most objectionable by the Congress were based upon complaints charging conspiracies to violate the Sherman Anti-Trust Act." *Milk Wagon Drivers' Union v. Lake Valley Farm Products*, 311 U.S. 91, 101. Furthermore, the plain basis for the decision below is the court's distaste for the absence of night marketing and the translation of that distaste into a declaration of illegality. The labor exemption was designed to extirpate such judicial fiat. A "union's exemption from the Sherman Act is not to be determined by a judicial judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means." *Allen Bradley Co. v. Local Union No. 3, IBEW*, 325 U.S. 797, 810-811.

It is necessary to insist upon this point. The notion that the legality of labor action under the antitrust laws

<sup>26</sup> *Division 1287, Amalgamated Association v. Missouri*, 374 U.S. 74, 82.



depends upon the legitimacy of its purpose draws on section 6 of the Clayton Act which provides in part that "nothing contained in the antitrust laws shall be construed . . . to forbid or restrain individual members of . . . [labor] organizations from lawfully carrying out the legitimate objects thereof. . . ." As interpreted, in *Duplex Printing Press Co. v. Deering*, 254 U.S. 443, 469, "there is nothing in the section to exempt such an organization or its members from accountability where it or they depart from its normal and legitimate objects, and engage in an actual combination or conspiracy in restraint of trade." This construction drew the sharp dissent of Justice Brandeis joined by Justices Holmes and Clark (id. at 484-486, footnotes omitted):

This statute [the Clayton Act] was the fruit of unceasing agitation, which extended over more than twenty years, and was designed to equalize before the law the position of workingmen and employer as industrial combatants. Aside from the use of the injunction, the chief source of dissatisfaction with the existing law lay in the doctrine of malicious combination, and, in many parts of the country, in the judicial declarations of the illegality at common law of picketing and persuading others to leave work. The grounds for objection to the latter are obvious. The objection to the doctrine of malicious combinations requires some explanation. By virtue of that doctrine, damage resulting from conduct such as striking or withholding patronage or persuading others to do either, which, without more, might be *damnum absque injuria* because the result of trade competition, became actionable when done for a purpose which a judge considered socially or economically harmful, and therefore branded as malicious and unlawful. It was objected that, due largely to environment, the social and economic ideas of judges, which thus became translated into law, were prejudicial to a position of equality between workingman and employer; that, due to this dependence upon the individual opinion of judges, great confusion existed as to what purposes were lawful and what unlawful; and that, in any event,

Congress, not the judges, was the body which should declare what public policy in regard to the industrial struggle demands.

By 1914 the ideas of the advocates of legislation had fairly crystallized upon the manner in which the inequality and uncertainty of the law should be removed. It was to be done by expressly legalizing certain acts regardless of the effects produced by them upon other persons. As to them, Congress was to extract the element of injuria from the damages thereby inflicted, instead of leaving judges to determine, according to their own economic and social views, whether the damage inflicted on an employer in an industrial struggle was *damnum absque injuria*, because an incident of trade competition, or a legal injury, because, in their opinion, economically and socially objectionable. This idea was presented to the committees which reported the Clayton Act. The resulting law set out certain acts which had previously been held unlawful, whenever courts had disapproved of the ends for which they were performed; it then declared that, when these acts were committed in the course of an industrial dispute, they should not be held to violate any law of the United States. In other words, the Clayton Act substituted the opinion of Congress as to the propriety of the purpose for that of differing judges; and thereby it declared that the relations between employers of labor and workingmen were competitive relations, that organized competition was not harmful, and that it justified injuries necessarily inflicted in its course.

Thus *Duplex* expressed the idea, over the dissent of Mr. Justice Brandeis that Congress had repudiated it, that the test of the legality of labor action was its legitimacy as determined by a judge. But *Duplex* and its kin were brought down, and the dissent won the day, with the enactment of the Norris-LaGuardia Act.<sup>27</sup> "The Act does not

<sup>27</sup> *United States v. Hutcheson*, 312 U.S. 219, 235-236; *Milk Wagon Drivers' Union v. Lake Valley Farm Products*, 311 U.S. 91, 102-103; *New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552, 562-563.

concern itself with the background or the motives of the dispute."<sup>28</sup> The view which prevailed is that "the area of economic conflict . . . had best be left to economic forces and the pressure of public opinion and not subjected to the judgment of courts."<sup>29</sup> Judicial arbitrament was out. To repeat from *Allen Bradley*, a "union's exemption from the Sherman Act is not to be determined by a judicial judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means." 325 U.S. at 810-811. And this commitment of normative judgment to private decision, forcefully expressed in the Norris-LaGuardia Act, is at the heart of the National Labor Relations Act as well. *Supra*, pp. 78-79; *infra*, pp. 108-109. It is central to national labor policy. Faithful to it, this Court has resisted even the most attractive of invitations to shape the law to its "policy predilections. . . ." *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195, 213.

In an antitrust proceeding, to judge the validity of labor action by its legitimacy is simply the rule of reason in a labor context. That means there is no labor exemption. For, *per se* violations aside, the rule of reason is the general standard by which the validity of every trade restraint is judged. To subject labor activity to it is to ask a court to decide whether the activity imposes an undue restriction on commercial competition, and, if it does, whether it is nevertheless justifiable because of the rightful demands of labor.<sup>30</sup> This is the direction in which Judge Thurman Arnold sought to go in 1939 when, as Assistant

<sup>28</sup> *New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552, 561.

<sup>29</sup> *United States v. Hutcheson*, 312 U.S. 219, 231.

<sup>30</sup> See Mr. Justice Brandeis' dissent in *Bedford Cut Stone Co. v. Journeymen Stone Cutters' Association*, 274 U.S. 37, 58, which fell back on the rule of reason as the second line of defense after the Justice's primary position in *Duplex* had been rejected.

Attorney General in charge of the Antitrust Division of the Department of Justice, he instituted criminal anti-trust proceedings based on his judgment as to whether the labor union was engaged in a "reasonable exercise of collective power" or an "unreasonable restraint."<sup>31</sup> Dean Harry Shulman strongly criticized the thesis underlying this approach,<sup>32</sup> concluding that it was in conflict with "the policy, steadily strengthened during the [Sherman] Law's fifty years, to withdraw the aims of labor action from the requirement of judicial approval or disapproval."<sup>33</sup> The Arnold demarche was put to an end by *United States v. Hutcheson*, 312 U.S. 219, one of the cases designed to spearhead it.<sup>34</sup> It is late in the day to return to it.

We do not wish to be misunderstood. We are firm in our conviction that our ends and means are entirely legitimate. We apologize for neither. We affirm both. Collective labor action to keep from working nights because the men prefer being home with their families needs no vindication. In our pecuniary society it is refreshing to see steadfast devotion to an aim which is not economic. The end served comes with high credentials even in a non-labor context.<sup>35</sup>

<sup>31</sup> Quoted in Smith, *Labor Law*, 408 (2d ed., 1953), and in 5 LRRM 1148-1149.

<sup>32</sup> Shulman, *Labor And The Anti-Trust Laws*, 34 Ill. L. Rev. 769, 779-787 (1940).

<sup>33</sup> *Id.* at 787.

<sup>34</sup> 5 LRRM 1151.

<sup>35</sup> In upholding the hours-of-trading rule of the Chicago Board of Trade, this Court observed that (*Board of Trade v. United States*, 246 U.S. 231, 241):

Every board of trade and nearly every trade organization imposes some restraint upon the conduct of business by its members. Those relating to the hours in which business may be done are common; and they make a special appeal where, as

True, the consequence of not working at night is that some consumers who prefer night shopping are inconvenienced by its absence. But as the District Court found, in considering this case on the alternative hypothesis that the rule of reason was applicable, "the fact that some consumers would prefer longer than 54 hours during the week within which to buy fresh meat can hardly constitute the basis for holding a restriction on night hours to be an unreasonable restraint of trade" (R. 677). The Court of Appeals scoffs the District Court's disposition as summary (R. 694, n. 4). And that makes our precise point. The applicability of the labor exemption does not depend upon agreement with the District Court's approval or disagreement with the Appeals Court's disapproval. Judicial judgment of the merit of the labor aim is irrelevant.

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here, they tend to shorten the working day, or, at least, limit the period of most exacting activity.

The attempt of the court below to distinguish *Board of Trade* is a baseless exercise in identifying pointless differences to the exclusion of the vital principle. Petition for writ of certiorari, pp. 35-37. And see, *Stovall v. McCutcheon*, 107 Ky. 577, 54 S.W. 969, sustaining as reasonable an agreement among merchants to close their businesses at 6:30 p.m., except Saturdays, between May 15 and September 1.

The labor interest in trading hours, because of their inevitable impact on working hours, is evident from labor support of Sunday closing by legislation. *McGowan v. Maryland*, 366 U.S. 420, 435 (majority opinion of Chief Justice Warren), 500-501 (separate opinion of Mr. Justice Frankfurter). See also, *Spilka v. Retail Store Employees Union Local 880*, No. 709, 132, Court of Common Pleas, Cuyahoga County, Ohio, quoted at R. 439, upholding the legality of the store operating hours in Cleveland. Illinois decisions are to like effect. *Cielesz v. Local 189, Meat Cutters*, 25 Ill. App. 2d 491, 167 N.E. 2d 302; *Baker v. Retail Clerks*, 313 Ill. App. 432, 40 N.E. 2d 571.



#### IV. THE CONTROVERSY LIES WITHIN THE EXCLUSIVE PRIMARY JURISDICTION OF THE NATIONAL LABOR RELATIONS BOARD.

Based on its determination that regulation of market operating hours is designed to serve labor's interests in "how long and what hours members shall work, what work they shall do, and what pay they shall receive," the District Court concluded that it is part of "conditions of employment . . ." (R. 672-673). Based on its determination that setting market operating hours is an exclusive managerial prerogative, the Court of Appeals concluded that it "is not a condition of employment, contrary to the district court's finding" (R. 694). The question presented is whether either determination is within judicial competence or whether resolution of the issue lies instead within the exclusive primary jurisdiction of the National Labor Relations Board because it falls within the regulatory scope of the National Labor Relations Act.<sup>36</sup>

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<sup>36</sup> The Court may wish to consider whether it is unnecessary to reach this question because the controverted conduct is so clearly protected activity within the scope of the National Labor Relations Act or immune activity within the labor exemption of the Sherman Act that determination of the requirement of prior recourse to the agency may be inappropriate. Withholding decision was the course followed in *Ford Motor Co. v. Huffman*, 345 U.S. 330, 332, n. 4; the Court concluding that it need not consider the question of the initial exclusive jurisdiction of the NLRB in that the Court's conclusion "on the merits . . . interprets the statutory authority of a collective bargaining representative to have such breadth that it removes all ground for a substantial charge that International, by exceeding its authority, committed an unfair labor practice." Similarly, the Court declined to consider whether a District Court had jurisdiction to review an NLRB representation determination without a showing of "unlawful action by the Board and resulting injury," the Court stating that the question "should not be decided in the absence of some showing that the Board had acted unlawfully." *Inland Empire District Council v. Millis*, 325 U.S. 697, 700. The question was thereafter decided in *Leedom v. Kyne*, 358 U.S. 184, when that showing was made.

Analysis begins with the reach of the National Labor Relations Act. Its focus is wages, hours, and working conditions. It is premised on seeking industrial stability "by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees" (NLRA, § 1, ¶ 4). To this end the status of a union as the majority representative of employees in an appropriate unit confers on it exclusive bargaining authority on their behalf "in respect to rates of pay, wages, hours of employment, or other conditions of employment" (§ 9(a)). To the status of the union is added the reciprocal obligation of employers and unions to bargain with each other in good faith (§§ 8(a)(5), 8(b)(3)). Their duty to treat with one another, like the union's status as the representative, extends to "wages, hours, and other terms and conditions of employment" (§ 8(d)). And "rates of pay, hours, and working conditions" defines as well the field within which governmental mediation facilities are provided, and the exertion of "every reasonable effort" by employers and unions is adjured, "to reach and maintain agreements" (§§ 201(b), 204(a)(1)).

The field thus pervasively defined is the precise milieu within which contractual regulation of market operating hours exists. Negotiation of market operating hours subsumes every element of wages, hours, and working conditions (*supra*, pp. 63-74), and is therefore a mandatory subject of collective bargaining because of its integral relationship to these matters.<sup>37</sup> Negotiation is obligatory but the content of the bargain is left to the parties subject only to the requirement that they treat with each other in good faith. Accordingly, whether an agreement should

<sup>37</sup> *N.L.R.B. v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342; *Local 24, Teamsters v. Oliver*, 358 U.S. 283; *N.L.R.B. v. Katz*, 369 U.S. 736.

regulate market operating hours "is an issue for determination across the bargaining table" (*N.L.R.B. v. American National Ins. Co.*, 343 U.S. 395, 409); "... Congress intended that the parties should have wide latitude in their negotiations, unrestricted by any governmental power to regulate the substantive solution of their differences" (*N.E.R.B. v. Insurance Agents' International Union*, 361 U.S. 477, 488).<sup>38</sup> And to secure accord part of the means protected by the National Labor Relations Act is the right to strike on the union's part and the exertion of countervailing economic pressure on the employer's side.<sup>39</sup>

In end and means, therefore, the subject of market operating hours is within the protected ambit of the National Labor Relations Act. If not, it is then necessarily within the rubric of activity prohibited by that Act. The unions have insisted in collective bargaining upon the limitation on market operating hours. To insist upon a non mandatory subject is to refuse to bargain, for "it is lawful to insist upon matters within the scope of mandatory bargaining and unlawful to insist upon matters without. . . ." *N.L.R.B. v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342, 349 (emphasis supplied). The NLRB order which ensues would require cessation from that insistence (*Wooster Division of Borg-Warner Corp.*, 113 NLRB 1288, 1297, affirmed, 356 U.S. 342), as well as from auxiliary conduct like strikes designed to effectuate it (*International Longshoremen's Association*, 118 NLRB 1481, 1483, remanded, 277 F.2d 681 (C.A.D.C.); see also *Local 164, Brotherhood of Painters*, 136 NLRB 997, 1001-03, enforced, 293 F.2d 133 (C.A.D.C.), cert. denied, 368 U.S. 824).

<sup>38</sup> See also, *Local 24, Teamsters v. Oliver*, 358 U.S. 283, 295; *Terminal R.R. Assn. v. Railroad Trainmen*, 318 U.S. 1, 6. And see, *supra*, pp. 78-79.

<sup>39</sup> *Division 1287, Amalgamated Association v. Missouri*, 374 U.S. 74; *N.L.R.B. v. Insurance Agents' International Union*, 361 U.S. 477, 489; *N.L.R.B. v. Lion Oil Co.*, 352 U.S. 282, 291.

One way or the other, therefore, the controversy can be conclusively determined by the Board, either to validate or illegalize the unions' conduct, and effectively to stop it if illegal. And the bedrock determination whether market operating hours is a mandatory or permissive subject of collective bargaining necessarily belongs initially to the Board. The court below directs entry of an injunction substantially as prayed in the complaint (R. 698). The complaint requests that "the restriction on hours . . . be declared illegal, null and void, and that defendants be enjoined from enforcing said restriction in [the collective bargaining agreements] . . . or any other rule, contract, or restriction having a similar effect or purpose" (R. 27). Were the Board to find that marketing hours is a mandatory subject of negotiation, it would require the unions and Jewel to bargain with each other on the subject should either refuse to do so. Thus the District Court is instructed to enjoin as a violation of the Sherman Act what the Board may compel as a duty under the National Labor Relations Act. This is an impossibility. A principal function of the doctrine of primary jurisdiction is to avoid just such "uncoordinated and conflicting requirements." 3 Davis, *Admin. Law Treatise*, § 19.01, p. 5 (1958). "Otherwise, we might have the spectacle of courts throughout the country enjoining practices as violations of the antitrust laws even though the agency specifically authorized to deal with them has determined or may decide, subject to judicial review, that such practices serve the interests" of the regulatory policy committed to the agency's administration. *S. S. W., Inc. v. Air Transport Ass'n of America*, 191 F.2d 658, 663 (C.A.D.C.). See also, von Mehren, *The Antitrust Laws and Regulated Industries: The Doctrine of Primary Jurisdiction*, 67 Harv. L. Rev. 929, 965-966 (1954).

Avoidance of such collision is the commanding reason underlying preemption of state action in favor of adjudication by the Board and it applies in the present context as well. Had the instant complaint been filed in a state

court alleging a violation of a state antitrust statute, dismissal of the complaint in deference to the exclusive jurisdiction of the Board would be required. This is the teaching of this Court's decisions in *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, and *Local 24, Teamsters v. Oliver*, 358 U.S. 283. *Garmon* teaches that where activity is *arguably* subject to the protection of Section 7 or the prohibition of Section 8 of the National Labor Relations Act, exclusive competence to decide the question resides with the National Labor Relations Board.<sup>40</sup> *Oliver* teaches that state prohibition is excluded, "even though that with which the federal law is concerned as a matter of labor relations be related by the State to the more inclusive area of restraint of trade" (358 U.S. at 297).<sup>41</sup>

The rationale which requires a state court to defer to the jurisdiction of the Board applies equally to a federal court. *Garmon* itself states that "When an activity is arguably subject to § 7 or § 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board . . ." (359 U.S. at 245, emphasis supplied). This has long been settled; indeed, the original displacement of the state courts was based on the fact that not even a federal court could act. "The same reasoning which prohibits federal courts from intervening in such cases, except by way of review or on application of the federal Board, precludes state courts from doing so. \* \* \* And the reasons for excluding state administrative bodies from assuming control of matters expressly placed within the competence of the federal Board also exclude state courts from like action." *Garner v. Team-*

<sup>40</sup> See also, *Local 20, Teamsters v. Morton*, 377 U.S. 252; *Local 400, United Association v. Borden*, 373 U.S. 690; *Local 207, Bridge Workers v. Perko*, 373 U.S. 701; *MEBA v. Interlake Steamship Co.*, 370 U.S. 173.

<sup>41</sup> See also, *Weber v. Anheuser Busch, Inc.*, 348 U.S. 468, 472-473, 479, 481.



*sters Union*, 346 U.S. 485, 491. See also, *Weber v. Anheuser Busch, Inc.*, 348 U.S. 468, 479 and n. 8; *Aetna Freight Lines, Inc. v. Clayton*, 228 F.2d 385, 389 (C.A. 2), cert. denied, 351 U.S. 950. For action by a federal court, no less than by any other tribunal, creates "potential conflict of two law-enforcing authorities, with the disharmonies inherent in two systems, . . . of inconsistent standards of substantive law and differing remedial schemes" (*Garmon*, 359 U.S. at 242).

Nor does it make a difference that the source of law invoked in the federal court is the Sherman Antitrust Act. The provision of the collective bargaining agreement at issue in *Oliver* pertained to minimum equipment rental of leased vehicles. The Court found the provision to be a mandatory subject of collective bargaining because it was designed to maintain the "basic wage structure established by the collective bargaining agreement" and to prevent "progressive curtailment of jobs" (358 U.S. at 293-294). While the provision in *Oliver* was attacked via state antitrust law, whereas the provision here is attacked via federal antitrust law, the difference in the source of the attack cannot alter the containment of the subject within the scope of mandatory collective bargaining. Whether it is within this scope depends solely upon whether it "is a subject within the phrase 'wages, hours, and other terms and conditions of employment' which defines mandatory bargaining." *N.L.R.B. v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342, 349. It is evident that the minimum equipment rental provision in *Oliver* would not be any less a subject of mandatory collective bargaining had the suit been instituted in a federal district court based on the federal antitrust laws rather than in an Ohio court based on the state antitrust laws. And the same must be true of the marketing provision in this case.

To be sure, in *Oliver*, the Court stated that "federal law sets some outside limits (not contended to be exceeded

here) on what their [the union's and employer's] agreement may provide, see *Allen Bradley Co. v. Local Union*, 325 U.S. 797; cf. *United States v. Employing Plasterers Ass'n.*, 347 U.S. 186, 190." 358 U.S. at 296. But the condemned aspects of the agreements in *Allen Bradley* and *Plasterers* pertained to compacts among business men to exclude competitors from the market. In *Allen Bradley*, for the purpose of maintaining price and market control, business men within New York City were limited in the persons to whom they could sell and from whom they could buy, and entry of products from outside New York City was barred (325 U. S. 797, 799-800); in *Plasterers*, out-of-state contractors were prevented from doing business in the Chicago area and entry of new local contractors was circumscribed (347 U. S. 186, 188). These were thus trade restraints effectuated by a combination of business men, aided by a union, in which the activity did not directly serve a collective bargaining objective and was related to wages and work *only* in the sense that the greater profits realized because of the activity enabled the employers to pay better wages and provide more work. The National Labor Relations Act does not require bargaining on a proposal to exclude competitors from the market or to fix prices on the theory that diminution in competition will make the companies more prosperous and thus enable them to increase wages.

But in this case, as in *Oliver*, the agreement pertains directly to a collective bargaining subject, and here, as there, the National Labor Relations Act controls. At the least the subject of the agreement is surely arguably within the regulatory scope of the National Labor Relations Act and hence the National Labor Relations Board alone is empowered to determine the question in the first instance. This is the nub of the matter. The "phrase 'wages, hours, and other terms and conditions of employment' which defines mandatory bargaining" (*N.L.R.B. v. Wooster Divi-*

sion of *Borg-Warner Corp.*, 356 U.S. 342, 349) is not self-explanatory. Like other instances of "specific application of a broad statutory term," determining its content and bounds "has been assigned primarily to the agency created by Congress to administer the Act"; it "belongs to the usual administrative routine of the Board." *N.L.R.B. v. Hearst Publications*, 322 U.S. 111, 130, 131. Especially is this so because the scope of mandatory bargaining is not static but unfolds to correspond with a developing economy. *Inland Steel Co. v. N.L.R.B.*, 170 F.2d 247, 254 (C.A. 7), cert. denied, 336 U.S. 960. Informed adjudication requires therefore initial determination by the agency attuned by experience and insight to the nuances of the industrial environment enveloping the question and deference on judicial review to the judgment it expresses.<sup>42</sup> Primary jurisdiction preserves these values by requiring prior recourse to the agency as a precondition to an antitrust action which crosses the regulatory statute: As with the Federal Aviation Act, so with the National Labor Relations Act, "proceedings before the Board . . . will produce a record, findings of fact and conclusions of law as to whether the specific practices complained of are legal or illegal under the . . . Act—all of which will be subject to judicial review under that Act." *S.S.W., Inc. v. Air Transport Assn. of America*, 191 F.2d 658, 664 (C.A.D.C.). Without such prior recourse responsible accommodation of antitrust policy with regulatory policy cannot be achieved. "Cases are not decided, nor the law appropriately understood, apart from an informed and particularized insight into the factual circumstances of the controversy under litigation." *F.M.B. v. Asbrandtsen Co.*, 356 U.S. 481, 499.

The principles underlying the preemption of state action thus control here as well. As has been observed, "even

<sup>42</sup> *N.L.R.B. v. Erie Resistor Corp.*, 373 U.S. 221, 235-236; *N.L.R.B. v. Truck Drivers Local Union*, 353 U.S. 87, 96; *N.L.R.B. v. Hearst Publications*, 322 U.S. 111, 130-131; *Phelps Dodge Corp. v. N.L.R.B.*, 313 U.S. 177, 194.

though the thinking about" preemption in the context of the National Labor Relations Act "has focused upon the problem of federalism, the problem still continues to be in part one of primary jurisdiction. When relief is sought in a federal court instead of in a state court, the problem of whether the court should defer to the Board is much the same." 3 Davis, Admin. Law Treatise, § 19.05, p. 23 (1958). "The principal reason behind the doctrine [of primary jurisdiction] is recognition of the need for orderly and sensible coordination of the work of agencies and of courts." *Id.* at 5. "... [B]efore the particular agency has defined the particular regulatory policy in the particular case, the courts are not well equipped to make initial decisions involving accommodation of the antitrust policy to the regulatory policy." *Id.* at 25. And so, "A court should not act without knowing the agency's specific regulatory policy with respect to the particular problem in the particular circumstances." *Id.* at 27.

Once the agency determination as finalized on judicial review has been made, the courts in an antitrust action may enforce the Sherman Act to whatever extent is consistent with it. In this case, were the Board to decide (with judicial approval on review of its action) that market operating hours is a mandatory subject of collective bargaining, the matter ends. "It is generally recognized that an act legal under the regulatory statute cannot constitute a violation of the antitrust laws." von Mehren, *The Antitrust Laws and Regulated Industries: The Doctrine of Primary Jurisdiction*, 67 Harv. L. Rev. 929; 944 (1954). On the other hand, were the Board to decide (with judicial approval on review of its action) that insistence upon contractual regulation of market operating hours is an unfair labor practice because the subject is within the scope of permissive rather than mandatory bargaining, the way is cleared for consistent antitrust action. Injunctive relief would not be necessary; the Board's cease-and-desist order would be fully effective to stop the prohibited con-

duct; indeed, the administrative remedy is superior, for unlike a judicial injunction (*supra*, pp. 98-99), it would not be circumscribed by the limitation that it can reach union action only when taken in combination with a non-labor group. It therefore hits the target cleaner and harder. But the question of treble damages would remain. Of course damages would be available, not for violation of the National Labor Relations Act, but only for transgressing the antitrust laws, and to show insistence upon a permissive subject of bargaining would obviously not establish a Sherman Act offense. The plaintiff would have to demonstrate (1) that the union was not acting in its self-interest free of a combination of business men violating the antitrust laws, in order to escape the labor exemption, and (2) that the questioned conduct constituted an unreasonable restriction upon commercial competition, in order to escape the rule of reason. But the present relevant point is simply that the opportunity to make this showing still exists once the administrative route has been travelled to a conclusion which permits consistent application of the Sherman Act.

For a court to decline or defer jurisdiction over an alleged antitrust violation in favor of an agency's determination of interrelated cognate questions falling within the purview of a regulatory statute is of course not new doctrine. Recourse to the agency has been required under the Interstate Commerce Act,<sup>43</sup> the Shipping Act,<sup>44</sup> the Packers and Stockyards Act,<sup>45</sup> and the Federal Aviation

<sup>43</sup> *Keogh v. Chi. & N.W. Ry. Co.*, 260 U.S. 156; cf., *United States v. West, P.R.R. Co.*, 352 U.S. 59.

<sup>44</sup> *United States Navigation Co. v. Cunard S.S. Co.*, 284 U.S. 474; *Far East Conference v. United States*, 342 U.S. 570; *Carnation Co. v. Pacific Westbound Conference*, 336 F. 2d 650 (C.A. 9); cf., *Federal Maritime Board v. Isbrandtsen Co.*, 356 U.S. 481, 496-500.

<sup>45</sup> *McClenaghan v. Union Stock Yards Co.*, 298 F. 2d 659 (C.A. 8).



Act.<sup>46</sup> This Court has stressed the applicability of the doctrine of primary jurisdiction to situations in which "administrative uniformity" and "administrative experience" were requisite.<sup>47</sup> "That doctrine requires judicial abstention in cases where protection of the integrity of a regulatory scheme dictates preliminary resort to the agency which administers the scheme."<sup>48</sup> These considerations are decisive here. Under the National Labor Relations Act, "Congress has expressed its judgment in favor of uniformity" (*Guss v. Utah Labor Relations Board*, 363 U.S. 1, 10-11), and the "unifying consideration" of this Court's "decisions has been regard to the fact that Congress has entrusted administration of the labor policy for the Nation to a centralized administrative agency, armed with its own procedures, and equipped with its specialized knowledge and cumulative experience" (*San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 242). The doctrine of primary jurisdiction should therefore apply to claimed violations of the Sherman Act which are arguably within the scope of the National Labor Relations Act. Prior resort to the Board is especially appropriate because the Sherman "Act is aimed primarily at combinations having commercial objectives and is applied only to a very limited extent to organizations, like labor unions, which normally have other objectives." *Klor's Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207, 212, n. 7.

<sup>46</sup> *Pan American World Airways v. United States*, 371 U.S. 296; *S.S.W., Inc. v. Air Transport Ass'n. of America*, 191 F. 2d 658 (C.A.D.C.).

<sup>47</sup> *United States v. Radio Corp. of Amer.*, 358 U.S. 334, 347-348.

<sup>48</sup> *United States v. Philadelphia National Bank*, 374 U.S. 321, 353.

**CONCLUSION**

For the reasons stated the judgment should be reversed and the case remanded with instructions to affirm the District Court's order dismissing the complaint.

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## APPENDIX A

## Relevant Statutory Provisions

1. *The Sherman Antitrust Act* (26 Stat. 209, as amended, 69 Stat. 282, 15 U.S.C. §§ 1, 2):

Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. . . .

Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

2. *The Clayton Act* (38 Stat. 731, 738, 15 U.S.C. § 17, 29 U.S.C. § 52):

Sec. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profits, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade under the antitrust laws.

Sec. That no restraining order or injunction shall be granted by any court of the United States, or by a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or be-

tween employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the facts specified in this paragraph be considered or held to be violations of any law of the United States.

3. *Th/ Norris-La Guardia Act* (47 Stat. 70, 29 U.S.C. § 101):

Sec. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are

herein defined and limited, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

Sec. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment.

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act.



(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value.

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State.

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence.

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute.

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified.

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

Sec. 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this Act.

Sec. 13. When used in this act, and for the purposes of this act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employees or associations of employees; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

4. The *National Labor Relations Act* (61 Stat. 136, 29 U.S.C. § 151 *et seq.*):

Section 1. \* \* \* The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

• • •

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

• • •

Sec. 8 (a) It shall be an unfair labor practice for an employer—

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

(b) It shall be an unfair labor practice for a labor organization or its agents—

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a). . . .

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession. . . .

Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. . . .

Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any

unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise. . . .

5. *Title II, Labor Management Relations Act, 1947* (61 Stat. 152, 29 U.S.C. § 171):

Sec. 201. That it is the policy of the United States that—

(b) the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes. . . .

Sec. 204. (a) In order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, employers and employees and their representatives, in any industry affecting commerce, shall—

(1) exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provision for adequate notice of any proposed change in the terms of such agreements. . . .



## APPENDIX B

**The Regulation of Market Operating Hours By Collective Bargaining Agreement in Areas Other Than Chicago**

1. Operating hours of both grocery and meat departments in food stores in Cuyahoga County, Ohio (which includes Cleveland and has a population of 1,647,895),<sup>40</sup> are 9:00 a.m. to 6:00 p.m., Monday through Thursday, and 8:00 a.m. to 6:00 p.m., Friday and Saturday (R. 426, 428-429, 433-434, 438). These operating hours have existed at least since 1945, except that before 1952 the hours on Wednesday were 9:00 a.m. to 1:00 p.m. (R. 434-435). The operating hours are set by the collective bargaining agreements between Retail Store Employees Union Local 880 and District Union 427, Amalgamated Meat Cutters and Butcher Workmen of North America, on the one hand, and Cleveland Food Industry Committee and Great Atlantic and Pacific Tea Company, on the other (R. 428, 433-434, 438). The agreement between Retail Store Employees Union Local 880 and Cleveland Food Industry Committee provides that (def. ex. 23, art. II):

**STORE HOURS (Cuyahoga County)**—Store operating hours in Cuyahoga County shall be as follows: Monday, Tuesday, Wednesday and Thursday, 9 a.m. to 6 p.m.; Friday and Saturday, 8 a.m. to 6 p.m.

In the six stores within Cuyahoga County in which the meat department employees are represented by District Union 427 but the grocery clerks are unrepresented, the meat department ceases operation at 6:00 p.m. and a sign is posted at the meat department stating that the 6:00 p.m. closing is pursuant to agreement with District Union 427 (R. 436-437).

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<sup>40</sup> U.S. Bureau of Census, Census of Population: 1960, Vol. 1, Characteristics of Population, Part A, Number of Inhabitants, p. 37-15 (U.S. Gov. Print. Off., 1961).

Outside Cuyahoga County, in the Ohio counties of Lake, Ashtabula, and Lorain, the store operating hours are 9:00 a.m. to 6:00 p.m., Monday through Thursday, 8:00 a.m. to 9:00 p.m., Friday, and 8:00 a.m. to 6:00 p.m., Saturday, and in the Ohio county of Medina the store operating hours are 9:00 a.m. to 6:00 p.m., Monday through Wednesday, 8:00 a.m. to 9:00 p.m., Thursday and Friday, and 8:00 a.m. to 6:00 p.m., Saturday (R. 433-434). The agreement between Retail Store Employees Union Local 880 and Cleveland Food Industry Committee provides that (def. ex. 23, art. II):

**STORE HOURS (Outside County)**—Store operating hours outside Cuyahoga County shall remain as presently constituted provided, however, that any employer who feels he must change hours to meet major competition will give the Union two weeks written notice of his intention before changing.

The population of Lake, Ashtabula, Lorain, and Medina Counties is 524,582.<sup>50</sup>

2. The collective bargaining agreement between Food Industry, Inc., and Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Local Union No. 81, covering meat markets in King and Kitsap Counties, Washington, which includes the principal city of Seattle, Washington, provides that (def. un. ex. 25, sec. 2 C, D):

... there shall be no selling or delivery of fresh meat before 9:00 a.m. or after 6:00 p.m. or on Sundays or holidays, nor, except within these hours shall there be any soliciting in person or by telephone for sales of fresh meat ...

Customers, except those at the counter prior to 6:00 p.m., shall not be sold fresh meat after 6:00 p.m.

<sup>50</sup> *Id.* at pp. 34-45, *supra*, p. 127, n. 49.

The collective bargaining between Wholesale and Retail Fish Dealers of Seattle, Washington, and Retail Fish Workers Local 81, Amalgamated Meat Cutters and Butcher Workmen of North America, provides that (def. ex. 26, § 2):

No market shall be open before 9:00 A.M. or remain open after 6:00 P.M., or on Sundays or Holidays.

The population of King and Kitsap counties is 1,019,190.<sup>51</sup>

3. The agreement between Food Industry, Inc. and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 151, covering meat markets in Snohomish County, Washington, which includes the principal city of Everett, Washington, provides that (def. ex. 27, § II 3, 4):

... there shall be no selling or delivering of fresh meat before 9:00 A.M. or after 6:00 P.M., or on Sundays or holidays, nor, except within these hours shall there be any soliciting in person or by telephone for sales of fresh meat ...

Customers, except those at the counter prior to 6:00 P.M. shall not be sold fresh meat after 6:00 P.M.

The population of Snohomish County is 172,199.<sup>52</sup>

4. The collective bargaining agreement at Butte, Montana, between Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 333, and Silver Bow Employers' Association, provides that (def. ex. 28, art. X, § 5):

There shall be no meat, meat products, poultry, fish, or any other article coming under the jurisdiction of

<sup>51</sup> *Id.* at p. 49-11, *supra*, p. 127, n. 49.

<sup>52</sup> *Ibid.*

the Butte Meatcutters' Union No. 333 in any type meat case, is to be sold or handled after the hours of 6:00 P.M. or before 8 A.M.

The population of Butte, Montana, is 27,877.<sup>53</sup>

5. At Anaconda, Montana, the collective bargaining agreement between Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 384, and Meat Dealers of Anaconda, Montana, provides that (def. ex. 29, art. 1(d)):

Meat cutters, apprentices or meat wrappers shall be employed in meat markets between the hours of nine o'clock A.M. (9:00 A.M.) and six-thirty o'clock P.M. (6:30 P.M.) except as specified in Article Five.

There shall be no meat, meat products, poultry, fish or any other article coming under the jurisdiction of the Anaconda Butcher's Union, Local #384, in any type meat case or to be sold or handled after the hours of six-thirty o'clock P.M. (6:30 P.M.) or before nine o'clock A.M. (9:00 A.M.) except as provided in Sections (a) through (d) of Article Five.

The exception in Article Five authorizes overtime "to be worked only in cases of emergency . . . ." The population of Anaconda, Montana is 12,054.<sup>54</sup>

6. The collective bargaining agreement with Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union 114, covering retail meat markets in St. Paul, Minnesota, and vicinity, provides that "Monday through Friday nights until 9 P.M. shall be the only scheduled night operation under this Agreement. All markets shall close at 6 P.M. on Saturday" (def. ex. 30, p. 3). The population of St. Paul, Minnesota is 313,411.<sup>55</sup>

<sup>53</sup> *Id.* at p. 28-14, *supra*, p. 127, n. 49.

<sup>54</sup> *Id.* at p. 28-14, *supra*, p. 127, n. 49.

<sup>55</sup> *Id.* at 25-30, *supra*, p. 127, n. 49.

7. At Kenosha, Wisconsin, until 1961, the collective bargaining agreement between Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union 283, and Jewel and other employers, as interpreted by an arbitrator, had provided that "the sale of fresh meat is restricted to the hours of 7:00 A.M. to 6:00 P.M. Monday through Saturday, except on Friday night between the hours of 9:00 A.M. to 9:00 P.M." (R. 350-351). In 1961 a change in the agreement was negotiated to permit unlimited hours of operation (R. 349, 351). The population of Kenosha is 67,899.<sup>56</sup>

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<sup>56</sup> *Id.* at p. 51-11, *supra*, p. 127, n. 49.



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No. 240

# In the Supreme Court of the United States

OCTOBER TERM, 1964

LOCAL UNION, No. 189, ETC., AMALGAMATED MEAT  
CUTTERS AND BUTCHER WORKMEN OF NORTH AMER-  
ICA, AFL-CIO, ET AL., PETITIONERS

v.

JEWEL TEA COMPANY, INC.

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES COURT OF  
APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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# **In the Supreme Court of the United States**

OCTOBER TERM, 1964

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No. 240

LOCAL UNION NO. 189, ETC., AMALGAMATED MEAT  
CUTTERS AND BUTCHER WORKMEN OF NORTH  
AMERICA, AFL-CIO, ET AL., PETITIONERS

v.

JEWEL TEA COMPANY, INC.

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SEVENTH CIRCUIT

---

**BRIEF FOR THE UNITED STATES AS AMICUS CURIAE**

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## **OPINIONS BELOW**

The opinion of the court of appeals (R. 691-698) is reported at 331 F. 2d 547. The opinions of the district court (R. 661-685) are reported at 215 F. Supp. 837 and 839. The prior opinion of the court of appeals on an interlocutory appeal, affirming the denial of a motion to dismiss the complaint, is reported at 274 F. 2d 217, certiorari denied, 362 U.S. 936. The prior opinion of the district court (R. 58-63), denying the motion to dismiss the complaint, is reported at 1959 CCH Trade Cas. ¶ 69,329.

### JURISDICTION

The judgment of the court of appeals was entered on April 27, 1964 (R. 699-700). The petition for a writ of certiorari was filed on July 2, 1964, and was granted, limited to two questions, on October 12, 1964. (R. 701-702). The jurisdiction of this Court is conferred by 28 U.S.C. 1254(1).

### STATUTES INVOLVED

The pertinent provisions of the Sherman Act (26 Stat. 209, 15 U.S.C. 1), the Clayton Act (38 Stat. 730, 15 U.S.C. 17, 29 U.S.C. 52), the Norris-La Guardia Act (47 Stat. 70, 29 U.S.C. 101 *et seq.*), and the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151 *et seq.*), are set forth in the Appendix, *infra*, pp. 87-94.

### QUESTIONS PRESENTED

The Court limited the grant of certiorari to the following questions:

1. Based on the district court's undisturbed finding that the limitation "was imposed after arm's length bargaining, \* \* \* and was fashioned exclusively by the unions to serve their own interests—how long and what hours members shall work, what work they shall do, and what pay they shall receive," whether the limitation upon market operating hours and the controversy concerning it are within the labor exemption of the Sherman Antitrust Act.

2. Whether a claimed violation of the Sherman Antitrust Act which falls within the regulatory scope

of the National Labor Relations Act is within the exclusive primary jurisdiction of the National Labor Relations Board.

#### INTEREST OF THE UNITED STATES

This case involves important issues concerning the interplay between the National Labor Relations, Sherman and Norris-La Guardia Acts in situations involving multi-employer collective bargaining. More specifically, the principal question is whether a group of employers and a group of unions violate the Sherman Act by entering into a collective bargaining agreement embodying the unions' demands concerning the hours during which meat departments in retail food markets may remain open—a limitation which restricts competition among the markets but which also protects the schedule of working hours and job assignments of the employees represented by the union. This is an area in which the respective policies of the antitrust laws and the labor laws may clash, since the former are designed to eliminate restraints upon competition and the latter to protect employees' rights to engage in concerted action—rights whose exercise may involve competitive restraints. The accommodation and reconciliation of the conflicting policies inherent in these laws is a matter of vital concern to the United States.

#### STATEMENT

As the court of appeals noted (R. 693), the facts are undisputed. This statement is based primarily on the findings of the district court.

Respondent Jewel Tea Co. ("Jewel") brought this action under the Sherman Act in 1958 against seven locals of the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO ("Meat Cutters"), the petitioners in this Court, Associated Food Retailers of Greater Chicago, Inc. ("Associated"), an association of independent food stores, and Charles H. Bromann, Associated's secretary and treasurer (R. 14). Jewel sought a declaratory judgment, injunctive relief and treble damages (R. 14). The complaint alleged that petitioners and Associated had conspired to restrain competition among retail meat markets in the Chicago, Illinois area by limiting the marketing hours for the sale of fresh meat through the following clause in the collective bargaining agreement between the Unions and Associated (R. 22-23, 25, 51):

Market operating hours shall be 9 A.M. to 6 P.M. Monday through Saturday, inclusive. No customer shall be served who comes into the market before or after the hours set forth above.

The district court, after trial without a jury, dismissed the complaint, holding that the "marketing-hours" clause did not violate the Sherman Act (R. 661-678).<sup>1</sup> The court of appeals reversed (R. 691-698).

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<sup>1</sup> After the district court in 1959 denied petitioners' motion to dismiss the complaint, 1959 CCH Trade Cas. ¶ 69,329 (N.D. Ill.), the court of appeals, on an interlocutory appeal, affirmed, 274 F. 2d 217, (C.A. 7), and this Court denied certiorari, 362 U.S. 936. The district court dismissed the complaint as against Bromann and Associated at the close of the plaintiff's case (R. 657-659, 682-683; 215 F. Supp. 837).



The limitation upon marketing hours originated after a Chicago butchers' strike in 1919 in protest against the then prevailing 81-hour, 7-day week (R. 662). Since that time the collective bargaining agreements always have included a provision limiting working and marketing hours (R. 662-663). The clause has been modified since it first appeared in the 1920 agreement, and has been in its present form since 1947 (*ibid.*). The agreement prohibits the sale after 6 P.M. only of fresh meat, and not of any other products (R. 664).

Collective bargaining between the Meat Cutters and Associated, which represents approximately 1000 food retailers in the Chicago area, including Jewel, has followed the same pattern since 1941 (R. 664-665, 670). Each group prepares its own demands separately, and presents them to the other (*ibid.*). In recent years the contracts have been renegotiated every two years (R. 664).

In July 1957 the Meat Cutters gave notice that they wished to negotiate a new contract (R. 665). In the ensuing negotiations the employers demanded, among other things, night marketing operations, extended working hours and a "flexible day" (R. 665). The unions opposed night work, even though the employers offered wage premiums therefor (*ibid.*) Jewel threatened to sue any employer, as a co-conspirator with the unions, who opposed night operations (R. 666). Despite this threat, the employers, including Jewel, signed the contract presented by the unions which continued the ban upon the sale of fresh meat

after 6 P.M. (R. 666). Jewel then instituted the present suit in 1958 (R. 12, 666).

In 1959, the Meat Cutters and the employer group began negotiations on a new collective agreement. The unions were then willing to negotiate with respect to night marketing hours. No agreement could be reached, however, on an adequate wage incentive for night work and the same marketing hours clause was retained in the 1959 agreement (R. 666).

In the 1961 negotiations the employers again demanded night marketing operations and night working hours, and offered wage incentives for such work (R. 666-667). Jewel, on behalf of the employers, drafted a proposal, presented to the Meat Cutters, which provided that the "hours and days to be worked by each employee shall be determined by the employer" and a subsequent proposal relating to night operations and night work hours (*ibid.*).

Jewel suggested, "as negotiations were 'breaking up' on November 16, 1961," that there be night operations without butchers being on duty (R. 667). The court found (R. 672) that this proposal was contrary to the Unions' self-interest because it "meant that this work would be done by others unskilled in the trade," since the evidence showed that if the fresh meat department were open "[s]omeone must arrange, replenish and clean the counters and supply customer services." The proposal also would have involved "an increase in workload in preparing for the night work and cleaning the next morning" (*ibid.*).

On the basis of the foregoing facts, the district court held (R. 678) that "the purport, history and ef-

fect of the controverted provision indicates that it is within the labor exemption of the Sherman Act \* \* \* and that it imposed no 'unreasonable' restraint on trade." It stated (R. 672):

\* \* \* the unions' insistence on the retention of the marketing hour restriction was based upon its desire to protect its right not to work at night, and to protect its work from being taken by others. \* \* \* the evidence established that the restriction was imposed after arm's length bargaining, including an overwhelming strike vote against night work, and was fashioned exclusively by the unions to serve their own interests—how long and what hours members shall work, what work they shall do, and what pay they shall receive. \* \* \*

The court of appeals reversed (R. 698). It held (R. 694, 695) that "the furnishing of a place and advantageous hours of employment for the butchers to supply meat to customers are the prerogatives of the employer," and that "[s]etting marketing hours is one such proprietary function which an employer has the exclusive right to determine \* \* \*." It stated (*id.* at 694):

As long as all rights of employees are recognized and duly observed by the employer, including the number of hours per day that any one shall be required to work, any agreement by a labor union, acting in concert with business competitors of the employer, designed to interfere with his operation of a retail business, engaged in handling products in the course of interstate commerce, is a violation of the Sherman Act \* \* \*.

## SUMMARY OF ARGUMENT

## I

The marketing hours clause does not violate Section 1 of the Sherman Act.

Where, as here, the marketing hours at which meat is sold at retail are historically and functionally related to hours of work and job opportunities, a contract regulating marketing hours fixes a "term or condition of employment." The subject is one upon which an employer has a duty to bargain collectively under Sections 8(a)(5) and 8(d) of the National Labor Relations Act and in support of which the union has the right to engage in concerted activities, protected against employer interference under Sections 7 and 8(a)(1) of that Act and against judicial limitation by Sections 4 and 13 of the Norris-La Guardia Act. The marketing hours at the meat counters of a retail establishment control the working hours of the Meat Cutters, whose jurisdiction includes all handling of fresh meat, unless the Meat Cutters are willing to yield part of their work to others. The marketing hours clause yields direct benefits for employees by protecting their jobs while scheduling convenient working hours.

A provision in a *bona fide* collective bargaining agreement which yields direct benefits to employees in compensation, hours, employment or working conditions does not violate Section 1 of the Sherman Act even though, as here, the provision also restricts commercial competition among employers in the sale of goods to such an extent that it would violate Section 1

if entered into by employers alone, acting solely in their own self-interest. The establishment of uniform wages, hours of labor and working conditions among competing employers, either by the extension of union organization and separate labor agreements or through multi-employer bargaining, eliminates price competition based upon differences in labor costs. Section 1 of the Sherman Act does not prescribe such agreements, however, both because they are not the kind of restraint upon commercial competition at which Section 1 is directed, *Apex Hosiery Co. v. Leader*, 310 U.S. 469, and because the congressional policy expressed in a series of enactments dealing with labor standards and labor legislation makes it plain that the requirement of price competition does not extend to competition in reducing costs where those costs are the wages and labor standards of working men.

The same principle applies for the same two reasons where the provision of a direct benefit for employees necessarily involves restricting competition among employers in the product market. Marketing hours and working hours for the sales force cannot be separated. An agreement to delay the installation of labor-saving devices, or to forego their use entirely, may artificially narrow the market for such machinery and may also restrict competition in the devising of new methods of manufacture, but those restrictions upon technological change may also be the only method by which the employees covered by the agreement can protect themselves against total loss of employment. The right to



bargain collectively upon such subjects as the schedule of hours in a retail establishment or elimination of jobs would be impaired, if not virtually destroyed, if no contract could be signed without challenge under Section 1 of the Sherman Act. Similarly, the right to engage in concerted activities in pursuit of such direct employee benefits would be a delusion if any agreement thereby obtained were to be judged by the tests applicable to business combinations. Such contracts are quite different from restrictions upon commercial competition among employers where the only benefit to the employees will be the indirect consequence of enabling their employers to obtain a larger return for their products through the suppression of competition.

Perhaps exceptions must be made for cases (a) in which the labor organization is using its leverage as a union to suppress competition with a business enterprise that it also operates; (b) where the restrictions are shown by independent evidence to have been imposed in aid of a combination of employers existing apart from the collective agreement; or (c) where the restriction, although nominally yielding direct benefits to employees, is essentially a guise for manipulating the market in the interest of employers in the hope that their increased market power would yield consequential benefits to the employees.

This case falls within none of the possible exceptions. The market hours clause was originated by the union in its own self-interest. It directly affects the hours of work of the union's employees. It directly protects them against the loss of a part of the work

within their jurisdiction, which would ensue if other clerks were allowed to attend the meat counters at hours when no butchers were on duty.

## II

Petitioners and one of the *amici* urge the Court, *inter alia*, to establish the sweeping rule that there is a labor immunity from the antitrust laws for any contractual stipulation reached as a result of arms-length collective bargaining upon any topic which is a mandatory subject of negotiation under Sections 8(d) and 9(a) of the National Labor Relations Act and which would give rise to a labor dispute under Section 13(c) of the Norris-La Guardia Act. In each instance the critical statutory test is whether the subject is a "term or condition of employment." The argument is that those statutes, read in the light of the evolution of the national labor policy, manifest a legislative intent to take all aspects of labor-management relations involving terms or conditions of employment out from under the Sherman Act.

The primary difference between our approach and the claim to a total labor exemption lies in the treatment of contracts which directly restrict competition among business firms in a product market without a direct benefit to the employees but are executed because the union, acting in its own self-interest, believes the increased market power of the employers may yield higher wages and improved labor standards for employees. There may also be a difference in the treatment of cases in which a clause appearing to yield direct benefits to employees is shown, by appropriate evi-

dence, to be essentially a device for manipulating the product market. We would pretermitt any ruling upon such situations. The claimed exemption would render the Sherman Act inapplicable whenever the clause related to a mandatory subject of bargaining.

Since this broad question has been raised, we discuss it at some length in the body of our brief. In the final analysis, however, the answer would seem to turn upon balancing the danger of antitrust decisions interfering with *bona fide* collective bargaining against the risk that a complete exemption from the antitrust laws would threaten the competitive character of parts of the economy by permitting labor unions and employers, working together, to restrict commercial competition. The indications of legislative intent appear at a standoff. There is not a great deal of reliable evidence upon either side of the question; nor much indication that an immediate answer, in broad terms, is required. Neither the scope nor the practical importance of the broad exemption, as opposed to narrower grounds of decision, can be firmly established. Whatever the answer, the marketing hours clause involved in this case does not violate Section 1. That is enough to decide the controversy. These circumstances, we suggest, counsel avoidance of the broader question.

### III

The National Labor Relations Act does not have exclusive primary jurisdiction over any aspect of the controversy concerning the legality of the marketing hours clause under the Sherman Act.

The doctrine of primary jurisdiction applies when enforcement of a claim ordinarily cognizable in the courts requires the resolution of an issue which has been placed by statute within the special competence of an administrative body. But the issues involved in an antitrust case growing out of collective bargaining agreements—even the question whether a particular clause relates to a mandatory subject of bargaining—are not issues which the National Labor Relations Board has been given general jurisdiction to consider. There is no suitable procedure for bringing such questions before the Board. The General Counsel has been given the exclusive and unreviewable power to determine what unfair labor practice charges he will prosecute, and a case can come before the Board only if he issues a complaint.

There is no reason to suppose that every alleged violation of Section 1 of the Sherman Act would provide a basis for charging the commission of an unfair labor practice. The most relevant unfair labor practice is a breach of the duty to bargain collectively. But in an antitrust case, by hypothesis, the parties will usually have bargained and then executed an agreement.

The National Labor Relations Board is given no power to issue declaratory orders interpreting Sections 8(d) and 9(a). It has no general regulatory jurisdiction over labor-management relations. Its jurisdiction is limited to preventing and remedying unfair labor practices and to resolving questions of representation.

The structure of the Act also shows that Congress did not intend to deprive the federal courts of power to interpret the National Labor Relations Act when such a question arises in a case within their statutory jurisdiction.

#### ARGUMENT

##### *Introductory*

Experience shows that application of the antitrust laws to employee organization and collective activity involving the labor market is often embarrassing to the courts and inconsistent with the public interest. On the other hand, labor-management negotiations have increasingly come to involve many or even all of the firms competing in a product market and extend to restrictions upon commercial competition among employers which would plainly violate the antitrust laws if imposed by the business firms acting in their own interests rather than as a result of *bona fide* collective bargaining with a labor union. How to reconcile and accommodate these conflicting policies, each firmly embedded in basic legislation, is an extraordinarily complex and subtle problem.

The challenged clause of the collective bargaining agreement involved in the instant case operates to the direct benefit of the employees represented by Meat Cutters because it bars scheduling work at unpleasant or inconvenient hours while at the same time preventing other groups of workers from taking over some of the work within the Meat Cutters' jurisdiction. In addition, the clause undeniably restricts



commercial competition in selling meat by limiting the hours at which meat may be sold even at self-service counters and stores. The court of appeals attempted to draw a dividing line in terms of "proprietary function" and rejected the claim of a labor exemption or immunity from the antitrust laws on the ground that management has the exclusive proprietary function of determining what days in the week and what hours of the day a business will be open (R. 694).

That holding, we submit, is plainly wrong. Where, as here, the hours at which meat is sold at retail are historically and functionally related to hours of work and job opportunities, the marketing hours are "terms or conditions of employment" upon which an employer has a duty to bargain collectively under Sections 8(a)(5) and 8(d) of the National Labor Relations Act and in support of which the union as bargaining representative has a right to engage in concerted activities, protected against employer interference under Sections 7 and 8(a)(1) of that Act and against judicial limitation by Sections 4 and 13 of the Norris-La Guardia Act.

Once this premise is established the present case can be analyzed along two quite different lines:

First, the broad question may be presented whether any provision of a collective bargaining agreement which deals with a "term or condition of employment" within the meaning of the Norris-La Guardia, 47 Stat. 70, 29 U.S.C. 101 *et seq.*, and National Labor Relations Acts, 49 Stat. 449, as amended by

61 Stat. 136, and 73 Stat. 519, 29 U.S.C. 151 *et seq.*, is automatically immune or exempt from challenge under the antitrust laws, at least when the union is not acting as a cat's-paw to aid a conspiracy of employers to manipulate the market. Some of the briefs filed in this case advocate this broad and automatic immunity. They derive no little support from the opinion in *Allen, Bradley Co. v. Union*, 325 U.S. 797.

Second, the case may be treated as raising only the much narrower question whether this agreement, which restricts competition through differences in marketing hours but also yields direct benefits to the Meat Cutters in work schedules and job protection, is a "contract \* \* \* in restraint of trade" prohibited by Section 1 of the Sherman Act. We submit that, for the reasons stated below in Point I, the market hours clause does not violate Section 1 even though such a restriction would be at least *prima facie* unlawful if imposed by business firms and absent the employees' self-interest.

Under these circumstances we believe that the broader question should be left undecided. Not only is it complex and subtle, but there are few hints and no sure indications of where the legislative branch intended the line to be drawn between the respective regimes of the antitrust and labor laws. The ultimate answers might be greatly affected by the scope given to the phrase "terms or conditions of employment" in the National Labor Relations Act during the still evolving course of interpretation.

The answers could also be influenced by increased knowledge concerning the kinds of direct restrictions upon commercial competition then being negotiated in collective bargaining, their number, and their impact upon the economy. Nor is there any evident public need for a broader decision. The issue does not appear to have vexed collective bargaining, and only on rare occasions permitting eclectic decisions has it come before the federal courts.

Decision of the broader question is not required by the petition for certiorari. Although the first question presented by the petition states the issue in terms suggestive of a claim to the blanket exemption based upon the National Labor Relations and Norris-La Guardia Acts (p. 2 above), we are reluctant to conclude that the limitation upon the grant of certiorari was intended to foreclose consideration of the narrower question whether the employees' self-interest in eliminating night work while protecting their job assignments is not enough to take the marketing hours restriction out of Section 1 of the Sherman Act. In any event, we suggest with deference that if, as we believe, the claim to a complete immunity presents closely-balanced and far-reaching questions whereas it is relatively plain in either event that this particular collective agreement does not violate the Sherman Act, then the Court should pretermitt the former question and decide the case upon the latter ground. We urge the narrower ground in Point I below.

Since the broader question has been raised, we analyze it in Point II in some detail. We express no conclusion, however, for the same reasons that we urge the Court to pretermitt the question.

In Point III we state our reasons for concluding upon the other question presented that no issue in the case is within the primary jurisdiction of the National Labor Relations Board.

## I

THE MARKETING HOURS CLAUSE DOES NOT VIOLATE THE  
SHERMAN ACT

A. THE MARKETING HOURS CLAUSE DEALS WITH A "TERM OR  
CONDITION OF EMPLOYMENT" WITHIN THE NORRIS-DA GUARDIA  
AND NATIONAL LABOR RELATIONS ACTS

The court below concluded that the multi-employer collective bargaining agreement fell outside the legitimate area of collective bargaining and violated the Sherman Act because management has the exclusive proprietary function of determining what days in the week and what hours of the day a business will be open (R. 694). We submit that the holding is plainly wrong. Where, as here, the hours at which meat is sold at retail are historically and functionally related to hours of work and job opportunities, the marketing hours are a "term or condition of employment," upon which an employer has a duty to bargain collectively under Sections 8(a)(5) and 8(d) of the National Labor Relations Act and in support of which the union as bargaining representative has a right to engage in concerted activities, protected against employer interference under Sections 7 and 8(a)(1) of that Act and

against judicial limitation by Sections 4 and 13 of the Norris-La Guardia Act.

Section 13(c) of the Norris-La Guardia Act defines "labor dispute" to include—

"any controversy concerning terms or conditions of employment \* \* \*

This Court has consistently given a broad construction to that definition. It has variously held that the phrase embraced stranger picketing in protest of racially restrictive hiring policies, *New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552; a strike in support of a demand that management not abolish telegraphers' positions without union consent, *Order of Railroad Telegraphers v. Chicago & N.W. Railway Co.*, 362 U.S. 330; a refusal to supply union musicians to make recordings, *United States v. American Federations of Musicians*, 318 U.S. 741, affirming *per curiam* 47 F. Supp. 304 (N.D. Ill.); and picketing of a foreign flag vessel because of substandard wages paid its crew of foreign nationals, *Marine Cooks & Stewards v. Panama Steamship Co.*, 362 U.S. 365. Compare *American Medical Assn. v. United States*, 317 U.S. 519 and *Bakery Sales Drivers Union v. Wagshal*, 333 U.S. 437. See generally, Etter, *Statutory Definitions of "Labor Dispute,"* 19 Ore. L. Rev. 81, 204 (1940); Note, *Labor Injunction and Judge-Made Labor Law: The Contemporary Role of Norris-La Guardia*, 70 Yale L.J. 70 (1960). Only picketing unrelated to employment policies is outside the scope of the Norris-La Guardia Act. E.g., *Khedivial Line, S.A.E. v. Seafarers' International Union*, 278 F. 2d 49 (C.A. 2),



where union picketing of a ship owned by a corporation organized under the laws of the United Arab Republic was carried on not to protest any policy of the ship or the corporation, but to protest UAR government's blacklist of ships stopping at Israeli ports.

Liberal construction of the term "labor dispute" in the Norris-La Guardia Act clearly comports with the will of Congress. The history of labor relations in United States from *In Re Debs*, 158 U.S. 564, and *Loewe v. Lawlor*, 208 U.S. 274, up to the passage of the Norris-La Guardia Act was marked by federal court interference with strikes, picketing and other exertions of economic pressure designed to better the workers' situation. See Cox, *Labor and the Antitrust Laws—A Preliminary Analysis*, 104 U.Pa.L.Rev. 252 (1955); *Report of the Attorney General's National Committee to Study the Antitrust Laws*, 294-296 (1955). The attempt to limit the role of federal courts under Sections 6 and 20 of the Clayton Act was largely emasculated by what Congress thought were unreasonably restrictive judicial interpretations. See Frankfurter and Greene, *The Labor Injunction* (1930). Consequently, Congress spoke in the Norris-La Guardia Act in the most unmistakable terms by depriving federal courts of jurisdiction to issue injunctions in cases involving or growing out of a labor dispute. The underlying public policy of the United States with respect to allowing full freedom for union organization and self-help was implemented by the *Hutcheson* decision, applying the broad definition of "labor dispute" not merely to injunctions but to

all cases under the Sherman Act. *United States v. Hutcheson*, 312 U.S. 219.

In the light of this history it would seem almost too clear for argument that the ancient quarrel between the Meat Cutters and Chicago meat markets over employment and marketing hours is a labor dispute within the meaning of the Norris-LaGuardia Act. Certainly it is not taken out of the statute by affixing the label "proprietary function". *Order of Railroad Telegraphers v. Chicago & N.W. Ry. Co.*, 362 U.S. 330.

It is equally plain that the various proposals put forward on this subject by the Meat Cutters raised topics on which the employers had a duty to bargain under the National Labor Relations Act. Section 2(9) incorporates almost verbatim the definition of "labor dispute" found in Section 13(c) of the earlier statute. Section 8(d) of the National Labor Relations Act, which defines the duty to bargain collectively, imposes an obligation to meet and confer in good faith with respect to—

wages, hours, and other terms and conditions of employment.

Section 9(a) of the latter statute makes the union chosen by the majority of the employees the exclusive bargaining representative with respect to—

rates of pay, wages, hours of employment, or other conditions of employment.

All these definitions, in our view, cover identical ground. The meaning of "terms and conditions of employment" cannot be different in one section of

the National Labor Relations Act from its meaning in another, and its meaning in that statute cannot be different from its meaning in Section 13(c) of the Norris-La Guardia Act from which it was copied.

The court of appeals ruled that a clause fixing the hours at which retail stores market meat cannot be a term or condition of employment because setting marketing hours is a "proprietary function which an employer has the exclusive right to determine as dictated by economic factors present within his trading area" (R. 695). The relation of the clause to labor standards cannot be so easily swept aside. The clause served the function of limiting hours of employment, both as to duration and schedule, without loss of job opportunities. The dispute over marketing hours can be traced back over four and one-half decades. Without question it grew out of, and involved, union concern over the hours of work of its members. During all of the labor negotiations from 1957 through 1961, with the exception of a single proposal made after this action was brought, and "as negotiations were 'breaking up' on November 16, 1961" (R. 667), bargaining with respect to night marketing hours was intertwined with proposals that butchers be available to work at night. The union regarded the clause as a means of insuring that its members would not have to work nights without losing some of their work to non-butchers. All this was found by the district court (R. 666-668). The findings bring the dispute and the contract provision well within both the Norris-La Guardia and National Labor Relations Acts.

It will be conceded, we assume, that a restriction upon hours of labor is a term or condition of employment about which an employer has a duty to bargain and which, if controversy breaks out, gives rise to a "labor dispute." The same rule applies to the scheduling of work, in terms of the days of the week and hours of the day.<sup>1</sup> There would be no difficulty in gathering a long list of contracts prohibiting, or providing premium pay for, work on holidays, or weekends, or at inconvenient hours.

Those objectives could be secured without restricting marketing hours but only at the expense of allowing employers to assign the work of handling meat products to clerks or other employees not represented by the Meat Cutters Union. Far from invalidating the provision, however, this additional purpose ties it the more closely to the statutory terms and conditions of employment. Clauses protecting job opportunities have often been held to be statutory subjects of collective bargaining under the National Labor Relations Act,<sup>2</sup> and controversies over them to be labor disputes within the Norris-La Guardia Act.<sup>3</sup> The

<sup>1</sup> *Inter-City Advertising Co.*, 61 NLRB 1377, 1384, enforcement denied on other grounds, 154 F. 2d 244 (C.A. 4).

<sup>2</sup> The cases are collected and discussed in the Brief for the National Labor Relations Board in *Fibreboard Paper Products Corp. v. National Labor Relations Board*, No. 14, this Term, pp. 25-26, 58-61. See also the Court's decision in the *Fibreboard* case itself, December 14, 1964 (contracting out of work performed by employees in the bargaining unit a mandatory subject of collective bargaining).

<sup>3</sup> E.g., *Order of Railroad Telegraphers v. Chicago & N.W. Ry. Co.*, 362 U.S. 330 (closing of stations and elimination of jobs); *United States v. American Federation of Musicians*, 318 U.S. 741, affirming *per curiam* 47 F. Supp. 304 (N.D. Ill.) (substitution of recordings for live musicians).

same is true of clauses and disputes over work assignments arising out of competition for jobs.<sup>6</sup>

It follows that the respondents' case cannot be sustained upon the ground that Meat Cutters and the other petitioners went outside the proper scope of collective bargaining and thereby rendered the agreement subject to scrutiny under the Sherman Act as if no protected interest of employees were involved. Whether the fact that a clause results from collective bargaining, upon a term or condition of employment is enough to provide an automatic exemption from the antitrust laws need not and, we urge, should not be decided in this case (see pp. 16-17 above and pp. 50-73 below). For the particular clause here involved, which yields to the employees direct benefits in labor standards and is not merely a colorable device for manipulating business competition, does not violate Section 1 of the Sherman Act.

**B. A PROVISION OF A COLLECTIVE BARGAINING AGREEMENT WHICH YIELDS BONA FIDE BENEFITS TO EMPLOYEES IN COMPENSATION, HOURS, EMPLOYMENT OR WORKING CONDITIONS DOES NOT VIOLATE THE SHERMAN ACT**

For the purposes of analysis under Section 1 of the Sherman Act contracts between employers and the col-

<sup>6</sup> See *Carey v. Westinghouse Electric Corp.*, 375 U.S. 261, 264-267; *National Labor Relations Board v. Radio and Television Broadcast Engineers, Local 1212*, 364 U.S. 573, 576-577, and cases there cited; *Green v. Obergfell*, 121 F. 2d 46 (C.A. D.C.); *Yoerg Brewing Co. v. Brennan*, 59 F. Supp. 625 (D. Minn.).



lective bargaining representatives designated by their employees<sup>5</sup> may be divided into three classes:

(a) Contracts fixing compensation, hours of work, and similar conditions of employment whose direct impact is confined to the labor market and which affect competition in product markets only consequentially;

<sup>5</sup> We lay to one side two groups of cases in which the contract is not confined to "employees" in a proper sense:

(a) Independent businessmen may not take themselves out of the antitrust laws by assuming the guise of a labor union, or affiliating with a labor union in an effort to regulate the prices which they charge or the persons with whom they will do business, or the persons with whom their suppliers or customers will do business. *E.g.*, *Columbia River Packers Assn. v. Hinton*, 315 U.S. 143. See *e.g.*, *Braddick v. Federation of Shorthand Reporters*, 115 F. Supp. 550 (S.D. N.Y.); *United States v. Fish Smokers Trade Council, Inc.*, 183 F. Supp. 227 (S.D. N.Y.); *Gulf Coast Shrimpers & Oystermans Assn. v. United States*, 236 F. 2d 658 (C.A. 5), certiorari denied, 352 U.S. 927; *United States v. National Assn. of Real Estate Boards*, 339 U.S. 485; *Local 36 of International Fishermen, etc. v. United States*, 177 F. 2d 320 (C.A. 9), certiorari denied, 339 U.S. 947; *Hawaiian Tuna Packers, Ltd. v. International L. and W. Union*, 72 F. Supp. 562 (D. Hawaii); *United States v. United Scenic Artists*, 1961 CCH Trade Cas. ¶70,015 (S.D. N.Y.); *Los Angeles Meat & Provision Drivers Union v. United States*, 371 U.S. 94; *Carroll v. Associated Musicians of Greater New York*, 1962 CCH Trade Cas. ¶70,494 (S.D. N.Y.), reversed 1962 CCH Trade Cas. ¶70,560 (C.A. 2); *McHugh v. United States*, 230 F. 2d 252 (C.A. 1), certiorari denied, 351 U.S. 966; see Note, *Employee Bargaining Power Under the Norris-La Guardia Act: The Independent Contractor Problem*, 67 Yale L.J. 98 (1957).

(b) It is also clear that while, as Section 6 of the Clayton Act recites, "The labor of a human being is not a commodity or article of commerce," at some point a performance by a human being becomes a trade or business. What in a labor union context would be a "wage" becomes rather a "price" charged for supplying entertainment or business services. Joint

(b) Contracts regulating hours, work schedules, work assignments and other matters of direct concern to employees which also operate as direct restrictions upon entry or competitive practices in a product market.

(c) Contracts which directly restrict commercial competition in a product market and which benefit employees only indirectly by enabling employers to increase the earning power of the business and thus to pay higher wages.

The wage increases and royalty payments involved in *United Mine Workers v. Pennington*, No. 48, this Term, fall in the first category. The marketing hours clause falls in the second category because it both fixes the employees' work schedules and restricts the sale of the employers' goods. The third category is not here involved.\* Because the first two categories are before the Court and involve analytical differences, we consider them separately even though the legal conclusions are substantially the same.

"employer" bargaining as to what are ostensibly "wages" in such cases becomes buyer-price-fixing. A concerted employer "lock-out" becomes a commercial boycott. This and other courts have wrestled with such problems in, e.g., *American Medical Assn. v. United States*, 317 U.S. 519; 110 F. 2d 703 (C.A. D.C.); certiorari denied, 310 U.S. 644; *Radovich v. National Football League*, 352 U.S. 445; *Gardella v. Chandler*, 172 F. 2d 402 (C.A. 2); *Anderson v. Shipowners Assn.*, 272 U.S. 359 (semble); *Union Circulation Co. v. F.T.C.*, 241 F. 2d 652 (C.A. 2).

\* *Allen Bradley Co. v. Union*, 325 U.S. 797, would fall in the third category.

1. *Contracts fixing compensation, hours of work and other conditions of employment and only indirectly affecting commercial competition*

We submit that a *bona fide* collective bargaining agreement fixing wages, hours of work and similar conditions of employment, the direct operation of which is confined to the labor market and which has only a consequential effect upon the employer market, does not violate Section 1 of the Sherman Act. The very limited qualifications to this rule of law which we subsume under the phrase "*bona fide*" are discussed at pp. 33-37 below.

The formation of a union among workingmen to eliminate competition between them in the sale of their labor potentially affects the prices at which employers will sell the goods they manufacture. The establishment of uniform wages, hours of labor, and working conditions among competing employers, either by the extension of union organization and separate labor agreements or through multi-employer bargaining, eliminates price competition based upon differ-

It cannot be seriously argued that multi-employer bargaining is illegal *per se*. The NLRA, as amended, authorizes the Board to certify multi-employer bargaining units, see *National Labor Relations Board v. Truck Drivers Local Union No. 449*, 353 U.S. 87. Refusal of an employer to sign an agreement reached by an informal multi-employer group of which he was a member has been held an unfair labor practice. *Town & Country Dairy*, 136 NLRB 517.

Section 20 of the Clayton Act, 29 U.S.C. 52, applies in favor of "any person or persons," defined in § 1, 15 U.S.C. 12, to include "corporations and associations." See H. Rep. 612, 62d Cong., 2d Sess., p. 8 (1912) incorporated in H. Rep. 627, 63d Cong., 2d Sess., p. 30 (1914); 51 Cong. Rec. 14333-4.

ences in labor costs. See generally Kennedy, *The Significance of Wage Uniformity* (1949). Section 1 of the Sherman Act does not proscribe such agreements, however, both because they are not the kind of restraint upon commercial competition at which Section 1 is directed, *Apex Hosiery Co. v. Leader*, 310 U.S.

The Norris-La Guardia Act was clearly intended to protect multi-employer bargaining and, in terms, speaks variously of, e.g., "employer organizations," § 4(b); "any of the persons," § 5; "organization of employers" and "associations of employers," § 13(a), etc. See also *United States v. United Mine Workers*, 330 U.S. 258, 275. S. Rep. 163, 72d Cong., 1st Sess., p. 19 (1932) states that "the bill, wherever it is applicable, applies both to employers and employees, and also to organizations of employers and employees." Senator Norris stated;

"Wherever it can be done this bill applies equally to organizations of labor and to organizations of capital. Organizations of employees and organizations of capital are treated exactly the same." 75 Cong. Rec. 4507 (1932)

See *Local Union No. 861 v. Stone & Webster Eng. Corp.*, 163 F. Supp. 894 (W.D. La.).

Finally, a variety of antitrust cases decided variously under the Norris-La Guardia Act, the *Hutcheson* doctrine and the rationale of *Apex*, have permitted considerable scope to joint employer activity. E.g., *Clune v. Publishers' Assn.*, 214 F. Supp. 520 (S.D. N.Y.), affirmed, 314 F. 2d 343 (C.A. 2); *Kennedy v. Long Island Rail Road Company*, 319 F. 2d 366 (C.A. 2), certiorari denied, 375 U.S. 830; *United Brick and Clay Workers v. Robinson Clay Product Co.*, 64 F. Supp. 872 (N.D. Ohio); *United Brick and Clay Workers v. Junction City Clay Co.*, 158 F. 2d 552 (C.A. 6); *United States v. San Francisco Electrical Contractors Ass'n*, 57 F. Supp. 57, 60-61; 62-63 (N.D. Calif.) (*dictum*); and *United States v. Detroit Sheet Metal and Roofing Contractors Association*, 116 F. Supp. 81, 90 (E.D. Mich.) (*dictum*). Compare *Anderson v. Shipowners Assn.*, 272 U.S. 359. See generally Levy, *Multi-Employer Bargaining and the Antitrust Laws* (1949) and Annotation, *Employer activities, beneficial or detrimental to organized labor, as violating Federal antitrust laws—Federal cases*, 93 L. Ed. 811 (1950).

469, and because Congressional policy expressed in a series of enactments dealing with labor standards and labor legislation, makes it plain that the requirement of price competition does not extend to competition in reducing costs where those costs are the wages and labor standards of working men. Price competition based upon sweated labor is neither national policy nor a purpose of the Sherman Act.

The principle was clearly stated in the *Apex* case:

\* \* \* an elimination of price competition based on difference in labor standards is the objective of any national labor organization. But this effect on competition has not been considered to be the kind of curtailment of price competition prohibited by the Sherman Act. [310 U.S. at 503-504.]

It has become the rule of decision in a variety of cases in the lower courts and administrative agencies. See, e.g., *California Sportswear & Dress Assn.*, 54 F.T.C. 835; *Davis Pleating and Button Co. v. Calif. Sportswear & Dress Assn.*, 145 F. Supp. 864 (S.D. Cal.); *Greenstein v. National Skirt & Sportswear Assn.*, 178 F. Supp. 681 (S.D. N.Y.), appeal dismissed, 274 F. 2d 430 (C.A. 2); *Adams Dairy Co. v. St. Louis Dairy Co.*, 260 F. 2d 46 (C.A. 8); and *Schatte v. International Alliance*, 182 F. 2d 158 (C.A. 9), certiorari denied, 340 U.S. 827. It has been accepted as a premise by most recent commentators; e.g., Cox, *Labor and the Antitrust Laws—A Preliminary Analysis*, 104 U. Pa. L. Rev. 252 (1955); Bredhoff, *Labor Unions Under the Sherman Act: The Supreme Court Will Take Another Look*, Seventeenth Annual



N.Y.U. Conference on Labor, p. 255 (1964); *Report of the Attorney General's National Committee to Study the Antitrust Laws* 293 et seq. (1955); Bernhardt, *The Allen Bradley Doctrine: An Accommodation of Conflicting Policies*, 110 U. Pa. L. Rev. 1094 (1962); Sovern, *Some Ruminations on Labor, the Antitrust Laws and Allen Bradley*, 13 Lab. L.J. 957 (1962).

The principle that the elimination of competition among employers based upon differences in wages and labor standards is not a violation of Section 1 rests, as suggested above, upon two foundations. First, contracts and combinations eliminating competition in the labor market do not involve the kind of "restraint of trade" to which Section 1 relates. Section 1 "was enacted in the era of 'trusts' and of 'combinations' of businesses and of capital organized and directed to control of the market by suppression of competition in the marketing of goods and services, the monopolistic tendency of which had become a matter of public concern" (*Apex Hosiery Co. v. Leader*, 310 U.S. 469, 492-493). The modifying phrase "in restraint of trade" had a familiar meaning at common law which thus delimited the statutory proscription. *United States v. Addyston Pipe & Steel Co.*, 85 Fed. 271 (C.A. 6), affirmed, 175 U.S. 211.

Second, Section 1 of the Sherman Act must be accommodated with the national labor policy expressed in other Congressional legislation. Section 6 of the Clayton Act, 38 Stat. 731, 15 U.S.C. § 17, made it clear half a century ago that it is not national policy to force workers to compete in the "sale" of their

labor as if it were a commodity. The policy was confirmed and extended in the subsequent Norris-La Guardia Act, 47 Stat. 70, 29 U.S.C. 101, *et seq.* See *United States v. Hutcheson*, 312 U.S. 219. Other Federal legislation establishing minimum wages and maximum hours takes labor standards out of competition. Fair Labor Standards Act of 1938, as amended, 52 Stat. 1060, 63 Stat. 910, 75 Stat. 65, 29 U.S.C. 201-219; Walsh-Healey Public Contracts Act, 49 Stat. 2036, 41 U.S.C. 35-45; Davis-Bacon Act, 46 Stat. 1494, 49 Stat. 1011, 40 U.S.C. 276a.

The National Labor Relations Act declares it to be the policy of the United States to promote the establishment of wages, hours and terms and conditions of employment by collective bargaining between employers and labor organizations freely designated by employees. The national policy towards collective bargaining would be left no scope for its operation if Section 1 of the Sherman Act applied to agreements dealing *bona fide* with matters at the heart of collective bargaining—compensation, hours of work, working conditions and like matters having only consequential effects upon competition among employers in product markets.

The policy of the labor laws also contemplates that there will be national labor organizations seeking to eliminate differences in labor standards among employers. This was common knowledge in 1935 when the Wagner Act was enacted. The aims and practices of such unions were well-known in 1947 at the time of the Taft-Hartley revision. Then and on subse-

quent occasions Congress refused to enact bills aimed at requiring competition among unions in the labor market. *E.g.*, H.R. 3020, 80th Cong., 1st Sess., Sec. 301; H.R. 8449, 82d Cong., 2d Sess., Sec. 2(3). Nor can it be seriously argued that multi-employer bargaining introduces an illegal element or is otherwise opposed to the national labor policy. Cf. *National Labor Relations Board v. Truck Drivers Local Union No. 449*, 353 U.S. 87.

The basic principle stated above allows no room for inquiry into the character or seriousness of the consequential impact of the wage bargain upon competition among employers, provided that the employees, through the union, are acting in what they conceive to be their own self-interest. It is immaterial that some firms may be driven from the market by inability to pay the union scale.

This is so, we further believe, regardless of the intent of the union in attempting to increase its members' wages. A union may believe that its best interests are served by permitting marginal employers to pay wages lower than the more efficient employers in order to keep them in business to provide work for more members. Cf. *National Assn. of Window Glass Mfgs. v. United States*, 263 U.S. 403. On the other hand, the union may believe its best interests are served by insisting on high wages and a consequent higher standard of living for those of its members who continue to be employed, even though it realizes, and in this sense "intends",<sup>\*</sup> that its demand for

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<sup>\*</sup> See *Apex Hosiery Co. v. Leader*, *supra*, 310 U.S. at 485-486.

higher wages, if granted, will put less efficient employers out of business. Nor is it material whether the union leaders desire the resulting stabilization of the industry. The antitrust laws do not force unions to take one position or the other. So long as they act in their own self-interest in demanding higher wages, shorter hours or better working conditions, the resulting agreement will not be an antitrust violation.

Thus, in the pending *Pennington* case we would conclude that the judgment should be reversed if the evidence shows no more than that the United Mine Workers and the employer parties to the wage and royalty agreements knew, or even desired, that the consequence of the increased compensation would be to put some employers out of business, provided that the union was acting *bona fide* in the belief that increased compensation would benefit its members.

Two qualifications should be noted. *First*, a union which owns and operates a business has no more right to use anticompetitive leverage to injure its business competitors than does any other business entity. *E.g.*, *Streiffer v. Seafarers Sea Chest Corp.*, 162 F. Supp. 602 (E.D. La.); *United States v. Seafarers Sea Chest Corp.*, 1956 CCH Trade Cas. ¶68, 298 (E.D. N.Y.).

A union acting alone to monopolize or attempt to monopolize a product market violates Section 2 of the Sherman Act. See *e.g.*, *Md. and Va. Milk Producers Assn. v. United States*, 362 U.S. 458. Difficult factual problems may arise in this area, for the union presumably does not lose its privilege *qua* union to seek wage increases from competitors of its business

(but see *Bausch & Lomb Optical Co.*, 108 NLRB 1955, which held that an employer has no duty to bargain with a union in business competition with it). Thus, the issue would seem to turn upon whether the union's demands in the collective bargaining were motivated by the interests of its members in directly improved labor standards or only by concern for eliminating business competition.

*Second*, both the union and employers are guilty of a violation of Section 1 of the Sherman Act where the proof shows, an independent conspiracy of businessmen, even though it grew out of a labor dispute, or was implemented through a collective bargaining agreement, or the collective bargaining negotiations were the occasion for its origination. *Allen Bradley, supra*, and *United States v. Women's Sportswear Mfgs. Assn.*, 336 U.S. 460 are such cases. See also *United States v. Employing Plasterers Assn. of Chicago*, 347 U.S. 186 and *United States v. Employing Lathers Assn. of Chicago*, 347 U.S. 198. As the facts in *Allen Bradley* itself show, liability may follow even though the employers' conspiracy originated from a union proposal. See the facts set out in 41 F. Supp. at 750 and 145 F. 2d 215 at 218, 220, and apparently considered sufficient by this Court, 325 U.S. at 798.

Perhaps the best example of such a case is *Philadelphia Record Co. v. Manufacturing Photo-Engravers Assn. of Philadelphia*, 155 F. 2d 799 (C.A. 3). In that private treble damage action, plaintiff newspaper had a collective bargaining agreement with defendant union under the terms of which union



members worked at night on newspaper photo-engraving and, in their spare time although not pursuant to the agreement, on commercial contract photo-engraving. Defendant association of commercial photo-engravers became disturbed with low price commercial competition by plaintiff, and refused to consent to defendant union's supplying workers to plaintiff for commercial photo-engraving at night. (The collective agreement between the union and the association forbade night work without the "consent of both parties.") Although its members rejected a strike vote against plaintiff, pursuant to its agreement with the association, the union ordered its members to refuse to do further commercial work for plaintiff at night. On these facts the trial court held defendants liable, and the Third Circuit affirmed unanimously under *Allen Bradley*. The decision seems clearly correct, for the union lent itself to a business conspiracy to suppress price competition. At the same time, we have no doubt that the union might have independently determined that its employees did not wish to work nights, or that they were overburdened by having to do commercial photo-engraving on top of newspaper photo-engraving. In the latter instances, the union could lawfully have struck for a demand that its members not be required to do commercial photo-engraving at night. Nor would there be a violation of Section 1 in these circumstances if the association of employers signed a contract forbidding night work, either before or after a strike.

Whether the claim be that the union is seeking to use its bargaining power for the benefit of a union-owned business or that the union is aiding an independent conspiracy of employers, it is not enough to make out a violation of Section 1 to prove the contract and that the union pressed for larger increases knowing that price competition and the survival of marginal producers would be adversely affected. It is equally immaterial whether the union believed that such "rationalization" of the industry would benefit its members and, in that sense, desired or intended the consequences. Juries should not be allowed to speculate about why a union bargained for increased compensation. Nor is it enough to show, in addition, that the more favorably situated employers thought that they would benefit from the effect of a high wage scale upon marginal competitors. To permit a finding of a Section 1 violation to be based upon such evidence would defeat the policy of allowing union organization and collective bargaining to take out of competition the costs of higher wages and improved labor standards. The legality of the union's conduct and the resulting agreement should not be made to turn upon either the degree of its economic sophistication or the extent of the employers' opposition. Consequently, a critical inquiry in the *Pennington* case would seem to be whether the verdict is or is not supported by evidence, independent of the agreement and its economic consequences, showing that the union was coming to the aid of a conspiracy of employers or seeking to advance its business invest-

ment rather than the interests of its members in the increased compensation.

2. *Contracts regulating hours, work schedules, work assignments and other matters of direct concern to employees which also operate as direct restrictions upon entry or competitive practices in a product market.*

In recent years the subject matter of collective bargaining has been vastly expanded so that labor-management agreements now cover a vast variety of subjects other than wages, hours and working conditions. The increased scope of collective bargaining not infrequently results in contracts that must, under any candid description, be acknowledged to operate as direct restraints upon commercial competition.

In contrast with the present case, collective bargaining is sometimes extended to cover competition in the product markets, without direct benefit to employees, solely because of the unions' self-interest in demanding terms in the collective agreement which tend to eliminate business competition in the industry. Winter, *Collective Bargaining and Competition: The Application of Antitrust Standards to Union Activities*, 73 Yale L.J. 14 (1963). If, through the terms of the collective labor agreement, an industry can be "rationalized," prices maintained at artificially high levels and new entry precluded, then the existing companies are likely to realize an improved net margin and be able to pay their workers higher wages. Consider, e.g., the facts in *Allen Bradley*, where electrical equipment manufacturers were not

only able to pay the wages demanded by the union but were also able to sell "their goods in the protected city market at one price and [sell] identical goods outside of New York at a far lower price." (325 U.S. at 800). Anticompetitive industry stability may thus favor higher labor standards and improved stability in labor management relations. Sacrificing a competitive economy which is the very keystone of free enterprise may well be a higher price, however, than Congress intended to pay for those desiderata, and, since that is not this case, we may assume *arguendo* that the terms of a multi-employer collective labor agreement which set product prices,<sup>9</sup> directly limit entry,<sup>10</sup> delimit the companies with which the employers may do business,<sup>11</sup> or allocate the markets or the territories in which competing employers may sell their goods, or which otherwise directly suppress commercial competition in the product market,<sup>12</sup> cannot be justified by the indirect advantages of increasing industry's stability and providing higher profits, or continued profits, in which the union hopes to share. Union self-interest in restraining competition between employers, though admittedly very real, would seem hardly to be the sort of self-interest which can justify a restriction on commercial competition.<sup>13</sup>

<sup>9</sup> See n. 18 below.

<sup>10</sup> See n. 20 below.

<sup>11</sup> *Ibid.*

<sup>12</sup> See generally, Annotation, *Union Activities Violating the Federal Antitrust Laws—Federal Cases*, 9 A.L. Ed. 2d 998.

<sup>13</sup> Petitioners Local Unions, appears to concede the appropriateness of this rule for, in commenting on *Allen Bradley*, they say: " \* \* the activity did not directly serve a collective bar-

*Apex Hosiery Co. v. Leader, supra.*

In a much larger number of cases collective bargaining covers methods of competition in the product markets because the same stipulations operate simultaneously in the labor market to the direct advantage of employees. That is true in the present case. The benefit to employees is not merely the indirect consequence of restricting competition among employers but the opposite face of one indivisible coin. Marketing hours and working hours for a sales force cannot be separated. An agreement to manufacture parts instead of buying them may deny the employers access to the market in which parts are available and also restrict competition in the devising of new methods of manufacture, but the restriction upon "subcontracting" may also be necessary to protect the jobs of the employees covered by the agreement. Contracts dealing with the installation of labor saving devices yield to the same analysis.

The validity of such contracts, when the result of *bona fide* collective bargaining, should be governed by much the same test as agreements dealing with compensation and other items having only a consequential effect upon competition among employers in product markets. See pp. 27-37 above. The right to bargain collectively concerning such subjects as the elimination of jobs would be impaired, if not virtually destroyed, if no contract could be signed regarding objective and was related to wages and work *only* in the sense that the greater profit realized because of the activity enabled the employers to pay better wages and provide more work." Petition, p. 31.



stricting subcontracting or the installation of labor saving machinery without challenge under the Sherman Act. Similarly, the right to strike and engage in concerted activities in pursuit of direct employee benefits would be a delusion if any agreement thereby obtained was subject to challenge under the Sherman Act whenever the direct benefits secured by the employees were as indissolubly linked as two sides of a coin with restrictions upon commercial competition.

Conceivably, courts might decide whether the direct benefits to employees were more or less important than the injury to competition. Actually, that approach would run counter to basic legislative policies. The history of judicial efforts under the Sherman Act to determine where lies the public interest in union organization and labor disputes demonstrates the unsuitability of that vehicle. Labor legislation from the Clayton Act through the Taft-Hartley Amendments to the National Labor Relations Act rejected such use of antitrust law as a means of resolving conflicts between the self-interest of employees, on the one hand, and of employers and consumers, on the other, at least where the employees are not seeking to advance their interests merely by providing a sheltered product market and thus conferring monopolistic power upon their employers. Both the Norris-La Guardia and National Labor Relations Acts also rejected judicial appraisal of the justification for employees' concerted action. *United States v. Hutcheson*, 312 U.S. 219, 232; *International Union*,

*United Automobile Workers v. Wisconsin E. R. Board*, 336 U.S. 245, 257-258. It would be quite inconsistent to allow judicial evaluation of the importance of the direct benefits obtained from a collective agreement as compared to the costs of the restriction upon competition.

Accordingly, we submit that a stipulation in a collective bargaining agreement which confers direct benefits upon employees does not violate Section 1 of the Sherman Act even though it also directly restricts commercial competition in the product market, unless it appears that the stipulation is essentially a device for manipulating the product market in the employers' interest. This approach means that judicial scrutiny is at an end once it is established that the restrictions are union-imposed and yield some direct benefit to the employees in wages, hours, employment or working conditions (as opposed to effecting anti-competitive benefits to employers in which the union hopes ultimately to share). Specifically, courts would not be permitted to weigh the social desirability of the labor objective against the effect of the restriction upon competition or the interests of employers or consumers.

Such a rule, while keeping the Sherman Act potentially available to deal with labor-management agreements aimed at stabilizing or increasing profits and wages by eliminating commercial competition, would leave full scope for collective agreements safeguarding other employee interests. Thus, a union of employees could bargain with employers with respect

to the terms and conditions under which the employers could engage independent contractors to perform work that could be, or is being done by the employees, to the extent necessary to protect the integrity of the employees' jobs and wages. See *Fibreboard Paper Products Corp. v. National Labor Relations Board*, No. 14, this Term, decided December 14, 1964; *Local 24, Teamsters Union v. Oliver*, 358 U.S. 283; *Aetna Freight Lines, Inc. v. Clayton*, 228 F. 2d 384 (C.A. 2), certiorari denied, 351 U.S. 950; cf. *United States v. Drum*, 368 U.S. 370, 382-383, n. 26; *Mitchell v. Gibbons*, 172 F. 2d 970 (C.A. 8). If independent contractors are directly substitutable for employees, then low "prices" paid such subcontractors for their services may not only result in direct loss of employees' jobs, but may also have a directly depressing effect on the wage structure. See *Milk Wagon Drivers' Union v. Lake Valley Farm Products, Inc.*, 311 U.S. 91; *Local 24, Teamsters Union v. Oliver*, *supra*; *Aetna Freight Lines, Inc. v. Clayton*, *supra*; *United States v. Drum*, *supra*. We need not consider whether "The scope of the test must accordingly be limited to contractors in functional competition with, and directly substitutable for, union members." Note, *Employee Bargaining Power Under the Norris-La Guardia Act: The Independent Contractor Problem*, 67 Yale L.J. 98, 102 (1957).<sup>14</sup>

<sup>14</sup> The problems presented by a union bargaining on behalf of independent businessmen-members of that union who are in competition with each other as to the terms and conditions upon which the employer will deal with them and with others who compete with them are quite different from the issues raised by the case at bar, and of a wider dimension than can be appropriately discussed within the confines of this brief.

Similarly, in view of the direct union interest in preserving the jobs of its members, unions and employers may lawfully agree that employers will not use certain labor-saving equipment, or that union members will receive higher pay when using labor-saving equipment, or that union members will be employed when labor-saving equipment is used even though they are not needed. *United States v. Bay Area Painters and Decorators*, 49 F. Supp. 733 (N.D. Calif.). See *United States v. American Federation of Musicians*, *supra*, and *United States v. International Hod Carriers and Common Laborers' District Council*, 313 U.S. 539, affirming *per curiam*, *United States v. Carrozzo*, 37 F. Supp. 191 (N.D. Ill.). Compare *United States v. Hamilton Glass Co.*, 155 F. Supp. 878 (N.D. Ill.) and *Alpha Beta Food Markets, Inc. v. Amalgamated Meat Cutters and Butcher Workmen*, 147 Cal. App. 2d 343, 305 P. 2d 163. Cf. Note, *Featherbedding and Freedom to Contract Under California's Antitrust Laws*, 11 Stan. L. Rev. 579 (1959). Again, Section 1 would not be violated by a collective bargaining agreement barring all subcontracting, even

When the union represents competing businessmen as well as employees the union bargaining demand may well be shaped by a desire to suppress price competition between its businessmen-members rather than solely by the employee-members' interest in their job and wage integrity. See *Los Angeles Meat & Provision Drivers Union v. United States*, 371 U.S. 94; *Columbia River Packers Assn. v. Hinton*, *supra*; *United States v. Gasoline Retailers Assn.*, 285 F. 2d 688 (C.A. 7); *United States v. Fish Smokers Trade Council, Inc.*, *supra*. See also *Allen Bradley Co. v. Union*, *supra*; cf. *Quality Limestone Products v. Drivers Local 695*, 207 F. Supp. 75 (E.D. Wisc.); *Taylor v. International Union of Journeymen Horseshoers*, 222 F. Supp. 812 (D. Md.); *United States v. United Scenic Artists*, *supra*.

though in another context this would be considered a commercial boycott, provided the contract resulted from a direct union interest in preserving jobs for its members. Cf. *Timken Roller Bearing Co.*, 70 NLRB 500, reversed on other grounds, 161 F. 2d 949 (C.A. 6). See generally; Note, *Union-Induced Employer Refusals to Deal: A Merger of Antitrust Standards and NLRB Expertise Suggested*, 67 Yale L.J. 893 (1958). *A fortiori*, in view of the union's direct interest in unionization and in maintaining union standards with respect to wages, hours and working conditions, employers would not violate Section 1 by submitting to a union demand that they not subcontract to non-union shops<sup>15</sup> or to union shops not paying wages or maintaining working conditions prevalent in the area.<sup>16</sup> Sections 8(b)(4) and 8(e) of the National Labor Relations Act, however, outlaw many such agreements.

Three qualifications should be noted. First, as in the case of contracts only consequentially affecting commercial competition, a labor organization which operates a business would violate Section 1 by using its leverage as a union to suppress competition with its business enterprise. See pp. 33-34 above.

Second, the privilege is lost if the restrictions are shown by independent evidence to have been imposed

<sup>15</sup> *Davis Pleating and Button Co. v. California Sportswear & Dress Assn.*, *supra*; *Calif. Sportswear & Dress Assn.*, *supra*.

<sup>16</sup> See *Greenstein v. National Skirt & Sportswear Assn.*, *supra*; *Judy Bond, Inc. v. Kreindler*, 36 Misc. 2d 943, 234 N.Y.S. 2d 375, affirmed, 18 App. Div. 2d 1138, 239 N.Y.S. 2d 532, certiorari denied, 375 U.S. 954.



in aid of a combination or conspiracy of employers existing independently of the collective agreement. See pp. 34-37 above.

Third, there would also seem to be cases in which the restriction, although nominally yielding direct benefits to employees, is essentially a guise for manipulating the market in the interest of employers in the hope that their increased market power would yield resulting benefits to the employees. A union of plumbers, for example, might agree with the local plumbing contractors that each must maintain a permanent office within the geographical jurisdiction of the local union, and that the union would not furnish journeymen to any contractor who had no permanent office within its jurisdiction. Some minor benefits might flow directly to the workers from such an agreement, but its real thrust could well be to prevent outside contractors from bidding for jobs in the area, thus enabling the local contractors to get all the work at higher prices, which they might share with the workers in higher wages. Similarly, in an industry distributing equipment or machines requiring continuing service by sales representatives or factory servicemen, competing manufacturers located in different parts of the country might, together with an industrial union representing their employees, divide the market geographically merely by contracting that no sales or serviceman should be required to travel more than a specified distance from his employer's main plant. Where a contract is shown to be such a device for suppressing business competition, it should be held to violate Section 1.

Although there is room for argument and the point need not be decided, we incline to the view that to bring a case within this third qualification there should be independent proof, beyond any inference that might be drawn from the agreement itself, showing that the contract is essentially a device for manipulating the market. Otherwise, the test would seem to lead back to mere appraisal of the social desirability of the benefits secured by the employees as opposed to the consequences of the restriction.

The point is unimportant in the present case because it cannot be found, by any stretch of the imagination, to fall within any of the three exceptions noted above. The "market hours" clause resulted solely from an independent union determination that its members did not wish to work nights and would not yield the work to other crafts. Associated opposed this demand and yielded to it only reluctantly. Respondent suggests Associated could have insisted on its position more vigorously, but yielding to a union's demand cannot be equated with an independent conspiracy of employers. Nor is it relevant that some members of Associated may not have been wholly unhappy to accept the "market hours" clause, for clearly an employer association has the right to adjust differences of viewpoint within its ranks as to what concessions it will make in the bargaining process. The result of holding otherwise would, in practical effect, be to outlaw multi-employer bargaining.

To be sure, in its opinion the Seventh Circuit wrote (R. 697) that defendants had:

\* \* \* entered into a combination or agreement, which constituted a conspiracy, as charged in the complaint. It was therefore illegal and void because violative of the Sherman Act. \* \* \* Whether it be called an agreement, a contract or a conspiracy, is immaterial.

In context, however, this clearly meant no more than that the court of appeals thought the "market hours" clause illegal *per se*, and that its originators were therefore conspirators. The court did not find a conspiracy apart from the clause.

The clause itself is plainly lawful under the standard submitted above. In saying this, we assume *arguendo* that the same restriction upon marketing hours would violate Section 1 of the Sherman Act, at least *prima facie*, if imposed by agreement of the employer members of the Association acting among themselves.<sup>17</sup> In such a context it would be a naked limitation on one crucial aspect of retail competition. Rule of reason analysis has never suggested that such a naked elimination of competition can be justified by showing that other elements in the competitive process remain undisturbed. To the extent that *Chicago Board of Trade v. United States*, 246 U.S. 231, remains good law, it must be limited to its peculiar facts involving the unique problems of a commodities exchange.

<sup>17</sup> In our view the denial of certiorari as to Questions 3 and 4 as presented in the petition for certiorari was intended only to foreclose argument upon the above question. See pp. 16-17, *supra*.

In the present case, however, the restraint upon commercial competition is plainly justified by *bona fide* union objectives unrelated to the existence or absence of competition among employers. Consequently, there is no violation of the Sherman Act.

An unequivocal, undisturbed finding establishes that the clause was originated by the union in its own self-interest (R. 662-663, 671-672). It directly affected the hours of work of the unions' members. If meat departments are not open at night, then butchers will not have to work at night. While it might be protested that butchers should have been satisfied with some sort of premium pay for night work, that hardly meets their position that they did not wish to *work* at night, and in any case it is inappropriate for a court in an antitrust case to challenge the wisdom of the union demand when that demand so clearly and directly relates to hours of work.

Superficially it can be argued that the clause is more restrictive of commercial competition than necessary to achieve the union objective, since a self-service meat department could arguably remain open without butchers on duty. Since night operation without night work was suggested only once in the bargaining from 1957 through 1961, it is doubtful that much weight should be given to this possibility, but in any case, if the meat department were open while there was no butcher on duty, there would be substantial likelihood that non-butchers would do butcher's work. This might occur even despite a clause in the agreement to the contrary. The difficulty of policing such an

arrangement would leave butchers with legitimate fear that the agreement would not and could not be honored completely. The pre-packaged meat in self-service meat counters might have to be arranged or replenished. An especially good customer might ask for special service, such as having a round steak ground into hamburger. The temptation on management to permit non-butchers to do these jobs would be severe, or so the union might feel. Moreover, the clause only required that the fresh meat department be closed, not that the entire store be closed, a clause which would be of doubtful legality since it would manifestly be more restrictive than required to meet the concern of the butchers' union. In the circumstances of this case, therefore, it seems plain that the "market hours" clause directly related to hours of work and was no more restrictive than necessary to achieve the union's goal of eliminating night work for its members while preserving the full scope of their jobs.

Unfortunately the clause also inconveniences housewives and other consumers many of whom may wish to buy meat but find it difficult to shop when the meat counters are open. In many instances those consumers are themselves wage earners whose jobs prevent them from doing their marketing except after hours. Thus, the convenience of the Meat Cutters conflicts with the convenience of many consumers. We fully recognize the importance of the consumer interest in this situation. The Congressional policy, however, puts trust in collective bargaining to protect that



aspect of the public interest as well as the self-interest of management and labor. It is to further collective bargaining, therefore, that consumers prejudiced by the restriction will look for the recognition of their interests, and labor and management have the responsibility of finding ways of accommodating the consumers' interests. If labor and management fail in that responsibility, the remedy lies in a legislative change of policy rather than judicial application of the Sherman Act to collective bargaining agreements.

## II

WHETHER ALL PROVISIONS OF A COLLECTIVE BARGAINING AGREEMENT THAT INVOLVE A "TERM OR CONDITION OF EMPLOYMENT" ARE IMMUNE FROM SCRUTINY UNDER THE ANTITRUST LAWS.

Although we believe that this case and the *Pennington* case can and should be decided upon the narrower grounds discussed above, it may be helpful to analyze the broader issue that counsel have also presented, even though we take no position upon the question.

We divide our discussion into two parts: (A) consideration of the differences between the claimed immunity and the scope afforded collective bargaining under the standards advocated above, and (B) analysis of the arguments for and against the claimed immunity.

### A. THE DIFFERENCES IN APPROACH

Petitioners and one of the *amici* urge the Court to establish the sweeping rule that there is a labor exemption or immunity from the antitrust laws for any

contractual stipulation reached as a result of arms-length collective bargaining upon any topic which is a mandatory subject of negotiation under Sections 8(d) and 9(a) of the National Labor Relations Act and which would give rise to a labor dispute under Section 13(c) of the Norris-La Guardia Act. In each instance the critical statutory test is whether the subject is a "term or condition of employment." The argument is that those statutes, read in the light of the evolution of the national labor policy, manifest a legislative intent to take all aspects of labor-management relations involving terms or conditions of employment out from under the Sherman Act. In effect, the immunity conferred upon unions acting alone, under the doctrine of *United States v. Hutcheson*, 312 U.S. 219, would be extended to unions and employers contracting together, provided the union is concerned for the employees' interest and not merely aiding an independent conspiracy of employers. Cf. *Allen Bradley Co. v. Union*, 325 U.S. 797.

The claim to a sweeping immunity or exemption based only upon a showing that the challenged clause deals with a "term or condition of employment" differs both analytically and practically from the more eclectic approach we have submitted. The broader argument is based solely upon the Norris-La Guardia and National Labor Relations Acts and appears to leave no room for economic analysis or distinctions in terms of the subject matter of the challenged clause, the directness or indirectness of the restraint upon

business competition or the immediacy or remoteness of benefits to the employees. The more eclectic approach we advocate <sup>17a</sup> goes directly to Section 1, as Mr. Justice Stone did in the *Apex* case, and asks how its words and policy apply to the particular kind of contract involved when read in the light of the national policy expressed in labor legislation.

The differences in result are harder to measure. Earlier we suggested a threefold classification of collective bargaining agreements having an effect upon business competition:

(A) Contracts fixing compensation, hours of work, and similar conditions of employment whose direct impact is confined to the labor market and which affect competition in product markets only consequentially;

(B) Contracts regulating hours, work schedules, work assignments and other matters of direct concern to employees which also operate as direct restrictions upon entry or competitive practices in a product market.

(C) Contracts which directly restrict commercial competition in a product market and which benefit employees only indirectly by enabling employers to increase the earning power of the business.

Under our view no contract in either of the first two categories violates Section 1 unless it is shown to involve manipulation of the market for the benefit of business firms rather than *bona fide* collective bargaining. Consequently, except for any difficulties of

<sup>17a</sup> In addition to the broad argument petitioners also present grounds for reversal somewhat similar to our approach.

classification, the primary difference between our approach and the claim to a total labor exemption lies in the treatment of contracts which directly restrict competition among business firms in a product market because the increased market power of the employers may yield higher wages and improved labor standards for employees. We would pretermitt this question. Petitioner and one *amicus* apparently claim immunity for such contracts provided that the challenged clause deals with a "term or condition of employment" which is a mandatory subject of collective bargaining under Sections 8(d) and 9(a) of the National Labor Relations Act. There may also be a secondary difference in the treatment of the situations envisaged at pp. 45-46 above, in which the clause appearing to yield direct benefits to employees is shown, by appropriate evidence, to be essentially a device for manipulating the product market. Although we tend to treat them as violations of Section 1 but lay the question aside as not presented, under the AFL-CIO view the exemption would seem to be applicable.

A number of uncertainties make it difficult to appraise the practical importance of the differences. In the first place, so far as we are aware there are no studies of the various forms of agreement that unions and management might negotiate in this area. It is clear that labor unions quite naturally realize that, if through the terms of the collective labor agreement, an industry can be "rationalized," prices maintained at artificially high levels and new entry precluded, then the existing companies are likely to

realize an improved net margin and be able to pay their workers higher wages. That was part of the theory of the National Recovery Administration in 1933-1935. This union self-interest in demanding terms in the collective agreements in an industry which will tend to eliminate business competition has sometimes led to the extension of collective bargaining to cover competition in product markets. See Winter, *Collective Bargaining and Competition: The Application of Antitrust Standards to Union Activities*, 73 Yale L.J. 14, 21-23 (1963). Thus, unions have interested themselves in the prices at which a product was sold,<sup>18</sup> the volume of production,<sup>19</sup> entry into the market,<sup>20</sup> and allocating territory.<sup>21</sup> Other restrictions can readily be imagined.

Second, there is a lack of empiric evidence not only as to the frequency with which such restrictions ap-

<sup>18</sup> Boston Herald, Nov. 9, 1954, p. 10, col. 1; Dunlop, *Wage Determination under Trade Unions*, 104-05 (1944); *Commonwealth v. McHugh*, 326 Mass. 249, 93 N.E. 2d 751; *Local 175, International Brotherhood of Electrical Workers v. United States*, 219 F. 2d 431 (C.A. 6), certiorari denied, 349 U.S. 917; *Las Vegas Merchant Plumbers Ass'n v. United States*, 210 F. 2d 732 (C.A. 9), certiorari denied, 348 U.S. 817; *Converse v. Highway Construction Co.*, 107 F. 2d 127 (C.A. 6).

<sup>19</sup> See *Penello v. International Union, United Mine Workers*, 88 F. Supp. 935 (D.D.C.). But note that the three day week and memorial holidays may equally have been methods of equalizing employment.

<sup>20</sup> *United States v. Employing Plasterers' Ass'n of Chicago*, 347 U.S. 186; *United States v. Chattanooga Chapter*, 116 F. Supp. 509 (E.D. Tenn.); *Allen Bradley Co. v. Union*, 325 U.S. 797; *Mayer Bros. Poultry Farms v. Meltzer* 274 App. Div. 169, 80 N.Y.S. 2d 874.

<sup>21</sup> Boston Herald, Nov. 9, 1954, p. 10, col. 1.



pear in collective bargaining agreements but also as to their effect upon the economy. One might infer lack of importance from the absence of particularized complaints if these were not the kinds of agreements that the parties prefer not to publicize.

Third, it is not clear how far the subject matter of such agreements will be held to be within the area of mandatory bargaining under the National Labor Relations Act, for which alone the exemption is claimed. The National Labor Relations Board holds that the subject matter of mandatory bargaining is not unlimited. Probably most of the restrictions in this category would fall outside that area. Today's decisions, however, hardly provide a fixed point of reference in predicting the future course of interpretation of the phrase "terms and conditions of employment" for the purposes of the National Labor Relations Act. The area of collective bargaining has been constantly expanding. Many topics are held to be mandatory subjects of bargaining today which were scarcely thought of in labor-management negotiations in 1935. And there is every reason to preserve the flexibility necessary to meet problems still unforeseen. See, generally, Brief for the National Labor Relations Board in *Fibreboard Paper Products Corp. v. National Labor Relations Board*, No. 14, this Term.

While lacking a reliable basis for judgment, we would estimate that the additional scope of the claimed immunity would cover an area having substantial but not great significance—a significance, however, more likely to grow than diminish.

## B. ARGUMENTS FOR AND AGAINST THE IMMUNITY

Section 1 of the Sherman Act applies to every contract in restraint of trade without distinction among persons or organizations. The very generality of the words would seem to put a heavy burden upon anyone seeking to exempt particular contracts in restraint of trade from the statutory proscription because of the character of the parties among whom the contracts were negotiated or whose interests they served. Price-fixing, exclusion from the market and other methods of providing shelter from commercial competition are no less restrictive when the stimulus to agreement comes from the interest of employees in increasing the profitability of the employers' business than from management. In *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 489, this Court held, after full consideration, that it "must regard the question whether labor unions are to some extent and in some circumstances subject to the Act as settled in the affirmative."

After the enactment of Section 6 of the Clayton Act declaring labor not to be a commodity or article of commerce, it should have been plain that the Sherman Act did not apply to the formation or operations of employee organizations aimed at increasing the return for personal services by bringing to bear the power of wage earners' collective action in the labor market. The debate was terminated by the Norris-La Guardia Act and *United States v. Hutcheson*, 312 U.S. 219. Such activities, especially when union organization is industry-wide, necessarily eliminate a source of price competition in the product market but that is not

the kind of restriction thought to violate Section 1. *Apex Hosiery Co. v. Leader, supra.*

It is equally clear that the system of collective bargaining established by the National Labor Relations Act would be badly constricted, if not destroyed, if the Sherman Act applied to labor contracts between employers and labor unions in exactly the same way as to contracts among employers alone. Industrial or market-wide unions must seek to eliminate the differences in labor costs which might be a source of competition in product markets and, if collective bargaining is to work at all, the elimination will be by agreement with employers. Furthermore, there are, as we have seen at pp. 37-50 above, a number of areas in which some curtailment of commercial competition is indissolubly linked with the protection of employee interests of the kind collective bargaining was intended to secure. The present case affords a plain example; the scheduling of working hours for retail clerks necessarily determines the hours a store will be open.

From these premises it can be strongly argued that, when Congress adopted the policy of protecting the organization of labor unions and requiring employers to bargain collectively with the representatives chosen by a majority of the employees, it intended to immunize the resulting agreements from attack under the antitrust laws. Up to a point that conclusion seems inescapable, and we advocate it to the extent indicated under Point I.

Doubt arises only with respect to contracts restraining commercial competition among employers

either without direct benefit to employees or where the nominal direct benefit is shown to be a subterfuge for manipulation of the market.<sup>22</sup> In such cases three additional factors seem relevant:

(1) The core of labor's interest, historically and practically, lies in wages, hours, employment, and working conditions. Demands aimed at "stabilizing" an industry by reducing commercial competition are, by and large, comparatively new and peripheral.

(2) Such direct restraints upon competition among employers in the sale of their goods and services are unnecessary to unionization and fruitful collective bargaining.

(3) The effect of a direct restraint upon commercial competition among employers in the product market is the same from the standpoint of the buying public whether the restraint be imposed by employers alone or by employers and employees acting together. Where the only function of the restraint is to increase the employers' gross return for his goods or services, the only difference between the two cases seems to be that in one case the higher return may go only to the owners and managers whereas it will be shared by employees in the other.

The claim to a broad immunity, in contrast to a more eclectic approach, would seem to depend upon whether these three factors *might* warrant a difference in the legal conclusion. If all collective bargaining agreements relating to terms and conditions

<sup>22</sup> The second alternative refers to the problem discussed at pp. 45-46 above.

of employment must be lumped together and either held immune or subjected to the same standards as agreements among business firms, then surely the inference to be drawn from the labor legislation enacted by Congress over the past half century is that all should be immune. The damage that would be done to collective bargaining by any other rule in the areas in which it would be constricted or frustrated by application of antitrust principles is much greater than the damage to the economy that might flow from granting immunity in the more doubtful area. The argument is also made, not without force, that the introduction of these analytical distinctions, which are always clearer in principle than in practice, would itself have a tendency to interfere with normal bargaining. Yet, collective bargaining is now highly sophisticated in the segments of the economy in which the questions are likely to arise and more complex problems are regularly solved by the lawyers and economists who participate. Congress, in leaving to the courts the task of reconciling the sometimes conflicting policies of the labor and antitrust laws, may well have intended not an "either/or" solution but to leave room for the subtler accommodations achievable in judicial administration.

Nothing in the words of the National Labor Relations Act gives any strong indication of the extent to which the policy of requiring collective bargaining about terms and conditions of employment was intended to immunize from scrutiny under Section 1 of the Sherman Act every agreement upon any subject



within that range. The duty is "to meet and confer in good faith" about any union proposal concerning a subject of mandatory bargaining. Perhaps the words can be read as imposing a duty to reach an agreement without regard to the provisions of other laws, but it seems most unlikely that any such absolute privilege was intended. In *International Brotherhood of Teamsters v. Oliver*, 358 U.S. 283, the Court said that the statutory scheme left no room for the "application of this state policy limiting the solutions that the parties' agreement can provide to the problems of wages and working conditions," but it also noted that the Sherman Act "sets some outside limits \* \* \* on what their agreement may provide." There is no logical inconsistency between requiring an employer to meet and confer in good faith about a given subject and permitting him to reply to a specific clause proposed by the union, if he speaks in good faith, that the union is asking him to do something illegal.

Nor does the existence of a duty to bargain collectively upon a particular subject license the employer and union to enter with impunity into agreements which violate other regulatory laws. The criteria to be followed in making lay-offs, promotions and demotions are statutory subjects of collective bargaining; but no one would suggest that the ensuing contract need not comply with the prohibitions against racial discrimination in the Civil Rights Act of 1964, 78 Stat. 241. Despite the broad language of the *Oliver* case when taken out of context, there would seem also

to be room for the operation of some State laws. In the construction industry it would be feasible to bargain about the kinds of materials workers will handle (e.g., plastic pipe), or about methods of construction, but compliance with a collective bargaining agreement could hardly be an excuse for violating a local building code. The age at which workers must be retired is a compulsory subject of bargaining, but no employer whose plant is located in a State which prohibits discrimination on grounds of age against workers less than 65 years old is under a duty to accede to a union proposal that all men be retired upon reaching 60 years of age. Contra: *Walker Mfg. Co. v. Industrial Commission*, 57 LRRM 2553 (Wisc. Circuit Ct., Dane County, October 19, 1964).

The reason for concluding in all these cases that the National Labor Relations Act does not authorize management and labor to arrange whatever substantive terms and conditions of employment they wish, free from the restraints imposed by other laws, is that the Act is primarily concerned with a method of establishing terms and conditions of employment, by which negotiations between employers and employees as a group are substituted for unilateral dictation. Senator Walsh's much quoted statement that the Wagner Act "does not seek to inquire into" what happens behind the doors where labor and management are bargaining may overstate the situation somewhat (see the discussion in *National Labor Relations Board v. Insurance Agents' International Union*, 361 U.S. 477, 484-487 and Cox, *The Duty to Bargain in Good Faith*, 71 Harv. L. Rev. 1401 (1958), but Con-

gress took pains in 1947 to reaffirm, both by pronouncement, H.R. Rep. No. 245, 80th Cong., 1st Sess., pp. 19-20, and by statute, 61 Stat. 142, 29 U.S.C. 158(d), that the Board was not to control the terms of the labor-management bargain through the guise of protecting the bargaining process. As this Court said in *National Labor Relations Board v. American National Ins. Co.*, 343 U.S. 395, 402: "Nor does the Act regulate the substantive terms governing wages, hours and working conditions which are incorporated in an agreement." No serious interference with that policy is likely to result from requiring the parties to collective negotiations to accommodate themselves to the surrounding framework of regulatory laws, including those affecting substantive terms or conditions of employment, provided that the law applies regardless of whether the term is established by employers unilaterally, by individual contracts, or by collective bargaining. For an employer to reject a particular proposal upon the ground that it is illegal, is not a refusal to bargain; it is a response rejecting the demand and, if made in good faith, stands upon the same footing as other grounds of rejection.

Exact precedents are lacking but interpretation of the National Labor Relations Act has generally taken note of the need to fit it into the surrounding legal system. *National Labor Relations Board v. Fansteel Corp.*, 306 U.S. 240; *Southern S. S. Co. v. National Labor Relations Board*, 316 U.S. 31. In the leading case of *American News Co.*, 55 NLRB 1302, the Board held that a strike to compel a wage increase pro-

hibited by the Act of October 2, 1942, 56 Stat. 765, was not a protected concerted activity. On other occasions the Board has allowed employers to respond to unions' bargaining proposals that they questioned their legality. *Fort Industry Co.*, 77 NLRB, 1287; cf. *Frohman Mfg. Co.*, 107 NLRB 1308.

We do not suggest that the foregoing analysis demonstrates that no inferences can be drawn from the National Labor Relations Act favorable to a broad immunity from the antitrust laws for all collectively bargained restrictions upon competition provided they deal with a mandatory subject of bargaining. We do say that it raises substantial question and that the inference is by no means compelling. It would seem, moreover, that there may be positive gains in separating the interpretation of the phrase "terms or conditions of employment" for the purposes of the National Labor Relations Act from the determination of what agreements between labor unions and competing employers violate the antitrust laws. If the automatic consequence of holding that a subject falls within the area of mandatory bargaining is that it is exempt from the Sherman Act, a new element quite foreign to the purposes and policies of the National Labor Relations Act will be interjected into administrative and judicial rulings upon the subject matter of mandatory bargaining. It might be preferable to interpret Sections 8(a)(5) and 8(d) pursuant to the criteria appropriate to questions of labor policy, and to leave questions of the interplay between labor and antitrust policy to separate resolution.

The Clayton and Norris-La Guardia Acts, as interpreted in *United States v. Hutcheson*, 312 U.S. 219, also furnish strong arguments for the view that the antitrust laws do not apply to collective bargaining agreements negotiated by a union acting *bona fide* in the interest of employees provided the agreement is confined to terms and conditions of employment. Under those acts the Sherman Act has no application to a peaceful strike or other concerted employee activities seeking to compel an employer to make any concession in a dispute concerning any term or condition of employment. In *Hutcheson* the Court said (p. 232):

So long as a union acts in its self-interest and does not combine with non-labor groups, the licit and the illicit under § 20 are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means.

Literally, the Norris-La Guardia and Clayton Acts do not cover collective bargaining agreements reached pursuant to the negotiations or the exertion of economic pressure by the union. Section 4 of the Norris-La Guardia Act removes federal court jurisdiction to issue injunctions against only the following types of activity: (a) striking, (b) joining a labor union, (c) paying or receiving strike benefits, (d) aiding litigation, (e) picketing, (f) assembling peaceably, (g) stating an intention to do any of the above, (h) "[a]greeing with other persons to do or not



to do *any of the acts heretofore specified*," and (i) inducing any of the above. None of the "acts heretofore specified" covers the agreement reached as a result of the collective bargaining process. While the Norris-La Guardia Act protects a union in striking, nothing in the language of the Act protects even from injunctive relief the agreements for which a strike may be conducted.

The same conclusion applies to Section 20 of the Clayton Act. Not only is the language of Section 20 similarly limited to unilateral employee conduct but it has never been suggested that the substantive exemption under the *Hutcheson* doctrine can be broader than the jurisdictional limitations imposed by the Norris-La Guardia Act, Section 4. See *United States v. United Mine Workers*, 330 U.S. 258, 270.

While the words are thus limited, there is an obvious incongruity in holding that, although the union is free to make war upon employers in order to achieve an illegal demand, both are subject to prosecution if the employers sign a treaty of capitulation. This Court noted the difficulty and assumed that ~~such a~~ settlement would come within the immunity in *Allen Bradley Co. v. Union*, 325 U.S. 797, 809:

Since union members can without violating the Sherman Act strike to enforce a union boycott of goods, it is said they may settle the strike by getting their employers to agree to refuse to buy the goods. Employers and the union did here make bargaining agreements in which the employers agreed not to buy goods manufac-

tured by companies which did not employ the members of Local No. 3. We may assume that such an agreement standing alone would not have violated the Sherman Act.<sup>23</sup>

The point was forcefully stated in *United States v. Bay Area Painters and Decorators Joint Committee*, 49 F. Supp. 733, 738 (N.D. Calif.):

The unions must necessarily "negotiate" and "bargain collectively" with the employers. It would seem beyond belief that Congress intended to protect the machinery used by labor to enable it to negotiate and bargain collectively for terms and conditions of employment and then, after it completes its negotiations and has made its bargain through agreement with employers, to withdraw that protection and leave the parties to the agreements liable for prosecution for criminal conspiracy. \* \* \*

Several opposing considerations must be taken into account in appraising the force of the inference.

(i) The importance of the incongruity may be exaggerated. The vast majority of bargaining demands, even if jointly conceded by a group of employers, would not violate the antitrust laws under the tests suggested in this brief. Clauses that restrict commercial competition in the product market without direct benefit to employees are not commonly sticking points in collective negotiations. They are far more likely to result from mutually beneficial collaboration.

<sup>23</sup> See also *Hunt v. Crumbock*, 325 U.S. 821, where the Court found the union's conduct in forcing an employer out of his business to be outside the antitrust laws even though it was through the medium of a closed shop agreement.

(ii) In analogous situations the Court has left to Congress the task of correcting any incongruity or unfairness in immunizing union activities aimed at inducing an employer to engage in unlawful conduct. Precisely this question was raised in *United States v. Building and Construction Trades Council*, 313 U.S. 539. As disclosed in the Briefs for the United States, Nos. 839 and 840, October Term, 1940, the indictment in the *Building and Construction* case charged the defendant union with boycotting firms who employed men of competing Local 806, which had been certified as the collective bargaining agent of the boycotted firms, for the purpose of forcing those firms to bargain with and employ members of defendant union. Had the employers acceded to this demand they would have been in clear violation of then Sections 8(a) (3) and (5) of the National Labor Relations Act. The facts in *United States v. United Brotherhood of Carpenters and Joiners*, 313 U.S. 539, were in all material respects identical. In both cases the Court affirmed *per curiam* the district court decisions sustaining demurrers to the indictments; the opinions cited the *Hutcheson* case without comment. No violation was found on much the same facts in *Fur Workers Union No. 21238 v. Fur Workers Union, Local No. 72*, 308 U.S. 522,<sup>24</sup> decided two years earlier.

<sup>24</sup> In *Fur Workers Union, Local No. 72 v. Fur Workers Union, No. 21238*, 105 F. 2d 1 (C.A. D.C.), Local 72, representing a minority of a company's employees, picketed to demand that the company rescind both recognition of the majority union, No. 21238, and the collective labor agreement the company had with it. Both Union No. 21238 and the company sought injunctive relief, with the company arguing that the union's strike was an attempt to compel it to commit an un-

A similar decision was rendered, albeit under another statute, in *National Labor Relations Board v. Drivers Local Union*, 362 U.S. 274, where the Court refused to bring picketing within the broad language of NLRA Section 8(b)(1)(A)), even though its announced objective was to compel an employer to grant the union recognition in violation of Section 8(a)(1). Moreover, there are marked differences between (i) allowing injunctions on the basis of judicial evaluation of the often-exaggerated, ill-phrased and uncertain union demands during organizational campaigns and labor disputes and (ii) subsequent adjudication of the legality of the actual terms of an executed agreement.<sup>240</sup> Compare *Retail Clerks, Local 1625 v. Schermerhorn*, 375 U.S. 96, with *Local No. 438 v. Curry*, 371 U.S. 542.

(iii) While there is considerable overlap, the policy considerations which moved Congress to take the federal courts out of union organizational activity and labor disputes are not all the same as those which could be thought involved in defining the proper role of the courts in dealing with agreements to which a group of employers is a party and which may restrict competition between them. To pour antitrust policy with respect to such agreements into the Norris-La

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fair labor practice under Section 8(a)(5) of the NLRA. The court of appeals nevertheless held that the Norris-La Guardia Act barred injunctive relief. This Court granted Union No. 21238's petition for certiorari and affirmed *per curiam*, 308 U.S. 522, citing *Lauf v. E. G. Shinner & Co.*, 303 U.S. 323, and *New Negro Alliance v. Sanitary Grocery Co.*, *supra*.

<sup>240</sup> The amendments adding Sections 8(b)(4)(C) and 2(b)(7) removed most of the two incongruities noted in the text.

Guardia Act mold, fashioned with an eye only upon unilateral concerted activity, would seem to extend the implications of that statute into an area dissimilar to any that Congress considered. The policy of a statute inheres in its limitations quite as much as its affirmations. The *Hutcheson* decision was itself an extrapolation from the general policy thought to lie behind the express provisions of the Norris-La Guardia Act, for they were framed explicitly in terms of limitations upon the jurisdiction to issue injunctions. Carrying the policy over to criminal prosecutions and civil actions for damages extended the bare meaning of the words. It would seem a double and, while permissible, more doubtful inference to conclude that the underlying policy is also to be applied to a quite different subject matter neither suggested by the language nor considered by the Congress.

(iv) The precedents in this Court appear to leave the question open. There is no decision applying the Sherman Act to a *bona fide* collective agreement, for *Allen Bradley* and its successors were cases in which the union joined an independent conspiracy of employers. On the other hand, the *arguendo* assumption in *Allen Bradley* strongly supports the argument that Section 1 of the Sherman Act is inapplicable to a *bona fide* labor agreement confined to terms and conditions of employment.

*Hutcheson* was not this kind of case. It concerned union picketing and operation of a boycott in a jurisdictional dispute. Indeed, in laying down the rule



applicable to union activities, Mr. Justice Frankfurter expressly noted that it only applied in evaluating union objectives—"under § 20," and Section 20 does not speak of the agreement reached as a result of the bargaining process. All of the subsequent decisions resting on *Hutcheson* were cases in which the gravamen of the offense was unilateral union conduct of one sort or another—picketing, striking, boycotting, etc.<sup>25</sup>

Similarly, the antitrust cases in this Court in which the Norris-La Guardia Act was held to ban injunctive relief directly have also been cases primarily involving unilateral conduct.<sup>26</sup> Indeed, it does not appear that the Norris-La Guardia Act has ever been applied by this Court in any other context to immunize from judicial scrutiny an agreement entered into in settle-

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<sup>25</sup> *United States v. American Federation of Musicians*, 318 U.S. 741, *supra* (union refusal to supply musicians to make recordings and insisted upon the hiring of standby musicians where recordings used); *United States v. Building and Construction Trades Council*, 313 U.S. 539 (union boycott of materials trucked by companies who hired members of an NLRB-certified competing union); *United States v. United Brotherhood of Carpenters and Joiners*, 313 U.S. 539 (boycott of purchasers of plywood from a company which hired members of a competing union which had won an NLRB election as its bargaining representative); and *United States v. International Hod Carriers & Common Laborers' District Council*, 313 U.S. 539, affirming *per curiam*, *United States v. Carrozzo*, 37 F. Supp. 191 (N.D. Ill.) (strikes and threats of strikes to prevent the use of ready-mix concrete trucks and, where used, to force use of same work force used with on-site mixers.)

<sup>26</sup> *Milk Wagon Drivers' Union v. Lake Valley Farm Products, Inc.*, 311 U.S. 91 (picketing of retail stores selling milk at cut-rate prices); *New Negro Alliance v. Sanitary Grocery Co.*, *supra* (picketing against racially restrictive hiring policies).

ment of a labor dispute.<sup>27</sup> Categorization of the Railway Labor Act cases involving the Norris-La Guardia Act is more difficult but all in which an injunction was refused were cases of unilateral union activity.<sup>28</sup>

In the final analysis resolution of the question discussed in this part of our brief would seem to turn upon balancing the danger of antitrust decisions interfering with *bona fide* collective bargaining against the risk that a complete exemption from the antitrust laws would threaten the competitive character of parts of the economy by permitting labor unions and employers, working together, to restrict commercial competition. The indications of legislative intent

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<sup>27</sup> *Lauf v. E. G. Shinner & Co.*, 303 U.S. 323 (picketing for a closed shop); *Marine Cooks & Stewards v. Panama Steamship Co.*, *supra* (picketing of foreign ship operated by foreign crew in protest of low wage rates); *Fur Workers Union No. 21238 v. Fur Workers Union, Local No. 72*, 308 U.S. 522 (union picketing to compel employer to recognize and negotiate with a union other than the one which represented the majority of the companies' employees); *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195 (strike in violation of a collective labor agreement).

<sup>28</sup> *Order of Railroad Telegraphers v. Chicago & N.W. Ry. Co.*, *supra* (union strike to compel the railroad to agree not to abolish telegraphers' positions without union consent: see especially note 14 and accompanying text at 338-339 when read against the dissent at 363); *Brotherhood of Railroad Trainmen v. Toledo, Peoria & Western R. Co.*, 321 U.S. 50 (union threatened violence and interference with operation of railroad when bargaining negotiations broke down). In a number of cases an injunction was granted. *E.g.*, *Brotherhood of Engineers v. Louisville and Nashville R. Co.*, 378 U.S. 33; *Brotherhood of Trainmen v. Chicago River & Indiana R. Co.*, 353 U.S. 30; *Virginian Ry. Co. v. System Federation*, 300 U.S. 515; *Brotherhood of Engineers v. Missouri-Kansas-Texas R. Co.*, 363 U.S. 528; *Brotherhood of Trainmen v. Howard*, 343 U.S. 768; *Graham v. Brotherhood of Firemen*, 338 U.S. 232.

appear at a standoff. There is not a great deal of reliable evidence upon either side of the ultimate question; nor much indication that an immediate answer, in broad terms, is required. The marketing hours clause involved in this case does not violate Section 1. See pp. 18-50, *supra*. That is enough to decide the controversy. In these circumstances we suggest that the considerations stated above counsel avoidance of the broader question, leaving it to legislative resolution should the need become pressing before it must be decided here.

### III

#### THE NATIONAL LABOR RELATIONS BOARD DOES NOT HAVE EXCLUSIVE PRIMARY JURISDICTION OVER THE CONTROVERSY CONCERNING THE LEGALITY UNDER THE SHERMAN ACT OF THE PROVISION IN THE COLLECTIVE BARGAINING AGREEMENTS LIMITING MARKETING HOURS

We have urged in Point I that the Court should reverse the judgment of the court of appeals on the ground that the "market hours" provision does not violate the Sherman Act; and that the Court therefore need not reach the difficult question, discussed in Point II, whether there is a broader immunity or exemption from the Sherman Act. We now show that, even if the Court were to hold, as petitioners contend, that any collective bargaining agreement settling a dispute over "terms and conditions of employment" does not violate the Sherman Act, it is for the courts, and not for the National Labor Relations Board, to determine whether the particular dispute is within that category. Two lines of reasoning support this conclusion. *First,*

there is no method by which the parties to an antitrust case could be assured of obtaining a Board ruling on the question. The Board's procedures do not lend themselves to the determination of issues of federal labor law that arise in antitrust litigation. Moreover, there would rarely be a case in which the conduct constituting the alleged violation of the Sherman Act could be brought within the familiar rubric of an unfair labor practice. *Second*, the statutory scheme of the National Labor Relations Act shows that Congress intended the federal courts to determine questions under that Act that arise in antitrust cases within their statutory jurisdiction.

A. THE NATIONAL LABOR RELATIONS BOARD IS NOT AN APPROPRIATE FORUM FOR DETERMINING QUESTIONS UNDER THE NATIONAL LABOR RELATIONS ACT THAT ARISE IN ANTITRUST CASES

"The doctrine of primary jurisdiction \* \* \* applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views." *United States v. Western Pacific R. Co.*, 352 U.S. 59, 63-64; cf. *Far East Conference v. United States*, 342 U.S. 570, 574-575. But before the doctrine can come into play, it is necessary not only that the issue be within the special competence of the administrative agency but, equally importantly, that the

regulatory statute provide suitable procedures for its resolution.

1. In the cases in which the doctrine heretofore has been applied, the litigants in the judicial proceeding have been able to obtain an administrative ruling by filing a complaint with the agency. Thus, after this Court held in the *Western Pacific* case, *supra*, that the Court of Claims should have referred the issue of tariff interpretation there involved to the Interstate Commerce Commission, the United States filed a complaint with the Commission raising that issue.<sup>29</sup> Similarly, in the *Far East* case the Court, in holding that the Federal Maritime Board had primary jurisdiction over a dispute concerning the legality of a steamship conference's use of a "dual rate" system, ruled (342 U.S. at 576) that the United States could file a complaint with the agency challenging the system under the Shipping Act, 1916.

The National Labor Relations Act, however, provides no similar procedure by which the parties to a pending antitrust action can be assured of obtaining a Board ruling on an issue allegedly within that agency's primary jurisdiction. Unlike most regulatory agencies, the Board's adjudicative processes are not automatically put into operation by filing a complaint with it. The Board's processing of unfair-labor-practice cases involves a two-step procedure. First, a charge that an unfair labor practice has been committed must be filed with a Regional Director of the Board. Section 10(b) of the Act; Part 101 of

<sup>29</sup> *United States v. Western Pacific R. Co.*, 309 ICC 249.



the Board Rules and Regulations, 29 C.F.R. § 101.2. On the basis of such charge and after investigation, the General Counsel (acting through the Regional Director) decides either to proceed further with the case (by issuing a complaint) or to drop it. Section 3(d) of the Act, 29 U.S.C. 153(d); 29 C.F.R. § 101.4-101.8. The Act gives the General Counsel "final authority" respecting the investigation of charges, the issuance of complaints, and the prosecution of complaints before the Board." (*Lewis v. National Labor Relations Board*, 357 U.S. 10, 15-16). Thus, if the district court in the present case had remitted the parties to the Board, and the respondent then had filed a charge that the unions had committed unfair labor practices, the General Counsel, had he believed that under the Board's decisions no violation were shown, could have refused to issue a complaint and thus terminated any administrative proceeding at the outset.

If the General Counsel does not issue a complaint, the Act provides no method by which the Board can determine whether particular conduct constitutes an unfair labor practice. Although the Board's Rules of Practice provide for the issuance of advisory opinions and, upon petition of the General Counsel, for declaratory orders respecting narrow jurisdictional issues, the Board in such rulings merely states whether it would assume jurisdiction over a particular controversy, and does not discuss the merits of the dispute.<sup>30</sup>

<sup>30</sup> The Board will give an advisory opinion on whether it will assert jurisdiction over a labor dispute which is the subject of a pending proceeding before a State or Territorial

There are no procedures, however, for obtaining declaratory rulings on questions of labor law arising in antitrust litigation. For the Board to improvise such procedures would appear inconsistent with the basic statutory plan of the National Labor Relations Act to limit rulings on unfair-labor-practice questions to situations where the General Counsel has issued a complaint following the filing of a charge.<sup>30a</sup>

court or agency, but such opinion does not cover either "the merits of the case" or "whether the subject matter of the dispute is governed by The Labor Management Relations Act of 1947, as amended." 29 C.F.R. 101.39, 101.40. Such opinions, moreover, ordinarily are rendered only to decide whether the amount of commerce involved satisfies the Board's jurisdictional limits. See, e.g., *Jemcon Broadcasting Co.*, 135 NLRB 362; *Hartford Bldg. Maintenance Co.*, 145 NLRB 140, 55 LRRM 1173; *National Bulk Carriers*, 134 NLRB 1186.

The Board also permits the General Counsel, in cases where the Regional Director dismisses both a charge and a representation petition, to obtain from the Board a declaratory order as to whether it would assert jurisdiction over the dispute. 29 C.F.R. § 101.42. This procedure is followed "because an appeal from dismissal of a charge is taken to the General Counsel, while an appeal from dismissal of a representation petition is taken to the Board, and the latter deems it appropriate "[t]o obtain uniformity in disposing of such cases on jurisdictional grounds at the same stage of each proceeding." *Ibid.*

<sup>30a</sup> The only specific statutory authority, of which we are aware which would permit the Board to establish an advisory opinion procedure for use in antitrust cases is § 5(d) of the Administrative Procedure Act, 5 U.S.C. § 1004(d), which provides: "The agency is authorized in its sound discretion, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty." But the "controversy" that a declaratory order under this Section may terminate or the "uncertainty" that it may remove relates to matters which are within the agency's gen-

2. It is difficult to see how, within the framework of the statutory issues the Board decides under the National Labor Relations Act, the substantive questions under that Act that arise in antitrust litigation could be presented to the Board for determination. The question whether a particular dispute relates to "terms and conditions of employment" is significant under the Labor Act because the answer determines whether the parties have a duty to bargain about it. The Board does not decide that question in the abstract, however, but only in determining whether one of the parties has committed an unfair labor practice by refusing to bargain about the subject of the dispute.

But the fact that a particular issue is not a mandatory subject of bargaining does not preclude the parties from voluntarily bargaining about it or one party from acceding to the other's demand. The district court found that both sides bargained extensively about the market-hours clause, and that, although the employers tried to eliminate it, they were unsuccessful and ultimately accepted it (R. 665-667). The execution of a collective bargaining agreement is, without more, rarely an unfair labor practice, even though the agreement contains provisions which cover matters

eral regulatory jurisdiction. Cf. *Frozen Food Express v. United States*, 351 U.S. 40, 44. As developed in the text, there can be no live "controversy" or "uncertainty" over whether a particular subject relates to "terms and conditions of employment" under the National Labor Relations Act when the parties in fact have bargained about and reached agreement on the subject.

that are not mandatory subjects of bargaining. Indeed, the only situation in which the National Labor Relations Act expressly condemns the mere entry into an agreement with a majority representative as an unfair labor practice is the prohibition in Section 8(e), 29 U.S.C. (Supp. V) 158(e), against so-called "hot cargo" agreements. In the present case, therefore, neither the unions' demand for the market-hours clause, nor the execution of the agreement containing it, constituted an unfair labor practice, and there would be no basis in the Labor Act for the Board to pass upon the question whether the clause related to "terms and conditions of employment."

In the present case the respondent employer, although it was a party to the agreement, subsequently challenged it by filing an antitrust suit, and presumably would have been willing to file a charge with the Board. In most instances, however, antitrust violations growing out of a collective bargaining agreement are likely to involve situations where all the parties to the "dispute" fully concur in the anti-competitive terms upon which the "dispute" is "settled." In such a situation the agreement could be challenged only by strangers to it, namely, by non-parties who have been injured, or by the United States in a civil or criminal action.

We assume that the United States could file with the Board an unfair-labor-practice charge.<sup>31</sup> But for the Board to determine unfair-labor-practice questions at the suit of some one not a party to any labor dispute, who seeks their resolution solely to aid it in performing its sovereign function of enforcing another statute, would represent a sharp break with the traditional practice before that agency. Furthermore, even assuming that a Board unfair-labor-practice finding were a necessary predicate for government civil antitrust cases, it certainly cannot be assumed that Congress intended to condition criminal cases upon such an administrative determination. See *United States v. Pacific and Arctic Ry. and Nav. Co.*, 228 U.S. 87; *United States v. Borden Co.*, 308 U.S. 188; *United States v. Railway Express Agency, Inc.*, 89 F. Supp.

<sup>31</sup> The National Labor Relations Act does not specify who may file an unfair-labor-practice charge. Section 10(b) merely authorizes the Board to issue a complaint "Whenever it is charged that any person" has committed an unfair labor practice. The Board's Rules of Practice provide that "any person" may file such a charge (29 C.F.R. § 102.9), and define "person" to have the same meaning as in Section 2 of the Act (*id.*, § 102.1). Section 2 defines "person" as "includ[ing] one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers." The question whether the United States is a "person" within this definition has not been decided. This Court has treated those not specifically excluded from the definition as included. *Local Union No. 25 v. New York, N.H. & H.R. Co.*, 350 U.S. 155, 160; *Plumbers' Union v. Door County*, 359 U.S. 354, 358-359.



981, 986 (D. Del.). Indeed, permitting an administrative agency to decide portions of a criminal case might present serious constitutional questions involving the right to trial by jury. See Fraenkel, *Can the Administrative Process Evade the Sixth Amendment?* 1 *Syr. L. Rev.* 173 (1949). Yet there cannot be a different rule as to the Board's primary jurisdiction depending upon whether the issue arises in a civil or a criminal case.

3. Even if issues of labor law arising in antitrust cases somehow could be brought within the familiar purview of unfair-labor-practice charges, the Board in most instances probably would be barred from adjudicating them by Section 10(b) of the Act (29 U.S.C. 160(b)). That Section provides that no complaint shall issue based upon an unfair labor practice occurring more than six months prior to the filing and service of the charge with the Board. Many antitrust violations are not known about within six months after their commission, and the extensive investigation frequently required before an antitrust action can be begun, either by the United States or by private parties, means that the suit cannot be filed until several years after the offense was committed. Congress has recognized these realities in Section 5b of the Clayton Act (15 U.S.C. 15b), by providing that suits for damages under the antitrust laws may be brought by private parties or by the United States within four years after the cause of action accrues. There is no statute of limitations, of course, on a civil suit brought by the United States to enjoin violations

of the antitrust laws, and the applicable period of limitations governing criminal antitrust proceedings is five years (18 U.S.C. 3282). Thus, in most antitrust cases the Board would not be able to issue a complaint because the conduct upon which the charge of unfair labor practices was based occurred more than six months prior to its filing.

**B. THE COURTS RATHER THAN THE BOARD ARE THE PROPER AGENCIES  
TO DECIDE LABOR LAW QUESTIONS ARISING IN ANTITRUST CASES**

Despite the strong considerations against giving the Board exclusive primary jurisdiction over questions under the National Labor Relations Act that arise in antitrust litigation, the contrary conclusion might follow if Congress clearly had so indicated, either explicitly or impliedly through the statutory plan. Congress concededly did not expressly so provide, and we submit that the proper inference to be drawn from the statutory design is that Congress intended the courts, and not the Board, to decide such questions.

Petitioners argue (Br. 110-115) that the rationale of this Court's decisions in the preemption field is equally applicable here. They contend that permitting the district courts to decide questions of federal labor law that arise in antitrust cases would lead to the same conflicts between the Board and the courts that the preemption doctrine is designed to avoid. But as indicated by the opinion last Term in *Teamsters Local 20 v. Morton*, 377 U.S. 252, the preemption doctrine is largely designed, not to prevent

courts from adjudicating questions which the Board can adjudicate, but to bar the application of substantive State law upsetting the balance of power between labor and management expressed in the national labor policy. See also *Garner v. Teamsters Union*, 346 U.S. 485, 500.

There are many situations in which both federal and state courts are permitted to entertain claims and decide issues that might also be within the jurisdiction of the National Labor Relations Board. For example, Section 301 of the Labor Management Relations Act gives the federal courts jurisdiction over suits on collective bargaining contracts. The preemption doctrine does not bar the courts from entertaining such actions, even though the breach of contract also constitutes an unfair labor practice over which the Board concededly would have jurisdiction. *Local 174 v. Lucas Flour Co.*, 369 U.S. 95, 101 n. 9; *Atkinson v. Sinclair Refining Co.*, 370 U.S. 238, 245, n. 5; *Smith v. Evening News Association*, 371 U.S. 195. For the preemption doctrine "merely rationalizes the problems of coexistence between federal and state regulatory schemes in the field of labor relations" (*Retail Clerks Local 1625 v. Schermerhorn*, 375 U.S. 96, 103), and where Congress has indicated that it intends to permit the courts to decide questions of federal labor law, the preemption doctrine will not be applied to oust them of that jurisdiction.

At the same time that Congress added Section 8 (b) (4) to the Act, it enacted Section 303 of the Labor Management Relations Act which gives persons in-

jured by jurisdictional strikes and secondary boycotts the right to sue in the district court for damages. In *International Longshoremen's & Warehousemen's Union v. Juneau Spruce Corp.*, 342 U.S. 237, this Court rejected the contention that an action could not be maintained under Section 303 unless and until the Board had found that the conduct violated Section 8 (b) (4) (D). This holding thus rejected a claim which, in effect, was that the Board had primary jurisdiction to determine whether the particular conduct upon which the suit was grounded was an unfair labor practice. The decision reflects the Congressional recognition, in giving the district courts plenary authority to entertain these suits, that "the facts in such cases are easily ascertainable by any court and do not require the expertness supposed to be one of the virtues of the administrative law procedure." S. Rep. No. 105, Supp. Views, 80th Cong., 1st Sess., p. 54.<sup>32</sup>

If the courts are not required to refer labor cases to the Board to decide questions under the National Labor Relations Act, *a fortiori* they are not required to refer antitrust cases involving similar issues. There is no indication in either the language of the National Labor Relations Act, its legislative history or its basic policy, or in judicial decisions, that Congress in that Act intended in any way to limit the

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<sup>32</sup> The original Senate bill, to which that report was directed, authorized the district courts to grant injunctions as well as damages. But the Committee's comment on the courts' ability to decide all the issues in cases under Section 303 is equally applicable to the statute actually enacted, which provides only for damage actions.

plenary authority of the federal courts to decide antitrust cases, or to require them to defer to the Board's expertise whenever such cases have subsidiary issues of labor law or policy. On the contrary, granting such authority to the Board would raise the danger that "the antitrust policy whose enforcement Congress in this situation has entrusted to the courts is in practical effect taken over by the [Board]" (*California v. Federal Power Commission*, 369 U.S. 482, 490).

In *Local 24, Teamsters Union v. Oliver*, 358 U.S. 283, this Court held that a State could not apply its antitrust law to prevent enforcement of a provision in a collective bargaining agreement prescribing terms and conditions which regulate the minimum rental and other terms of lease when a motor vehicle is leased to a carrier by an owner who drives his vehicle in the carrier's service. The Court ruled that since the provision dealt with a mandatory subject of collective bargaining under federal law (*i.e.*, wages), the State antitrust law could not "be applied to prevent the contracting parties from carrying out their agreement upon a subject matter as to which federal law directs them to bargain. \* \* \* The application would frustrate the parties' solution of a problem which Congress has required them to negotiate in good faith toward solving, and in the solution of which it imposed no limitations relevant here" (pp. 295-296). After noting that federal law created the duty to bargain collectively and that federal law is "applicable to the agreement the parties made in response to that



duty" (p. 296), the Court, citing two cases involving federal court suits in which the Sherman Act had been held to cover union activities,<sup>33</sup> stated that "federal law sets some outside limits (not contended to be exceeded here) on what their agreement may provide" (*ibid.*). In the light of the question before the Court in the *Oliver* case—whether the National Labor Relations Act preempted the subject to which the State antitrust law was sought to be applied—the latter statement supports the view that, where a collective bargaining agreement is challenged under the Sherman Act, the courts are to decide all questions which determine its validity and need not await an initial determination by the National Labor Relations Board.

#### CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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DECEMBER 1964.

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<sup>33</sup> *Allen Bradley Co. v. Union*, 325 U.S. 797; *United States v. Employing Plasterers Assn. of Chicago*, 347 U.S. 186.

## APPENDIX

**Sherman Antitrust Act, Section 1 (26 Stat. 209, as amended, 15 U.S.C. 1):**

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. \* \* \*

**Clayton Act, Sections 6 and 20 (38 Stat. 731, 738, 15 U.S.C. 17, 29 U.S.C. 52):**

**SEC. 6.** The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

**SEC. 20.** No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at

law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

Norris-La Guardia Act, Sections 1, 2, 4, 5 and 13 (47 Stat. 70, 71, 73, 29 U.S.C. 101, 102, 104, 105, 113):

SEC. 1. No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with this provision of this chapter; nor shall any such restraining order or temporary or permanent injunction be is-

sued contrary to the public policy declared in this chapter.

SEC. 2. In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in such sections, the public policy of the United States is declared as follows:

Whereas under prevailing economic conditions developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted.

SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

SEC. 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 104 of this title.

SEC. 13. When used in this chapter, and for the purposes of such sections—



(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in this section) of "persons participating or interested" therein (as defined in this section).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representatives of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

National Labor Relations Act, Section 1 (49 Stat. 449, as amended, 61 Stat. 136, 29 U.S.C. 151):

It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing; for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

National Labor Relations Act, Section 8 (49 Stat. 452, as amended, 61 Stat. 140, 29 U.S.C. 158):

(a) It shall be an unfair labor practice for an employer—

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title.

(b) It shall be an unfair labor practice for a labor organization or its agents—

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 159(a) of this title.

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder,

and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession. \* \* \*

National Labor Relations Act, Section 9 (49 Stat. 453, as amended, 61 Stat. 143, 29 U.S.C. 159):

(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. \* \* \*

Labor Management Relations Act, 1947, Section 301 (61 Stat. 156, 29 U.S.C. 185):

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organization, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the

organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Labor Management Relations Act, 1947, Section 303 (61 Stat. 158, as amended, 73 Stat. 545, 29 U.S.C. 187):

(a) It shall be unlawful, for the purpose of this section only, in an industry or activity affecting commerce, for any labor organization to engage in any activity or conduct defined as an unfair labor practice in section 158(b)(4) of this title.

(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) of this section may sue therefor in any district court of the United States subject to the limitations and provisions of section 185 of this title without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

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OCTOBER TERM, 1964.

**No. 240**

LOCAL UNION NO. 189, ETC., AMALGAMATED MEAT  
CUTTERS AND BUTCHER WORKMEN OF NORTH  
AMERICA, AFL-CIO, ET AL.,

*Petitioners.*

*vs.*

JEWEL TEA COMPANY, INC.,

*Respondent.*

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1964.

**No. 240.**

**LOCAL UNION NO. 189, ETC., AMALGAMATED MEAT  
CUTTERS AND BUTCHER WORKMEN OF NORTH  
AMERICA, AFL-CIO, ET AL.,**

*Petitioners,*

*vs.*

**JEWEL TEA COMPANY, INC.,**

*Respondent.*

**BRIEF FOR RESPONDENT.**

**STATUTES INVOLVED.**

Provisions of the Clayton and National Labor Relations Acts pertinent to petitioners' contentions are omitted from the briefs of petitioners and the United States. They are:

1. *The Clayton Act* (38 Stat. 731, 15 U. S. C. § 15):

“4. Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.”



2. *The Clayton Act* (38 Stat. 737, 15 U. S. C. § 26):

"16. Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, \* \* \*"

3. *National Labor Relations Act, as amended* (61 Stat. 139, 29 U. S. C. § 153(d)):

"(d) There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. \* \* \* He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 160 of this title, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law."

**QUESTION PRESENTED.**

The grant of certiorari was limited to two questions raised by the Unions' petition, namely: (1) whether the restraint of trade in issue is within the labor exemption from the Sherman Act because indulged in by the Unions for what they conceived to be the interest of their members; and (2) whether, because collective bargaining is involved, the National Labor Relations Board should have exclusive primary jurisdiction.

The first question was euphemistically stated in the Unions' petition so as to embrace an overturned conclusion of the District Court that the trade restraint, "Market operating hours shall be 9 A. M. to 6 P. M., Monday through Saturday inclusive," is a regulation of "how long and what hours [Union] members shall work, what they shall do, and what pay they shall receive." This conclusion was overturned by the Court of Appeals because it does not

accord with the facts which show that hours of work, work jurisdiction and rates of pay are fully and comprehensively fixed by other provisions of the contract (R. 42 *et seq.*). The hours, working conditions and rates of pay of butchers in no way have been, or will be, changed by any order entered in this case, for respondent does not attack, nor did the Court of Appeals purport to pass upon, those provisions of the contract (R. 42 *et seq.*) which define the hours butchers shall work (Art. 4, R. 49), their work "jurisdiction" (Art. 2, R. 46)<sup>1</sup> or their rates of pay (Art. 3, R. 48). This is clear from the contracts and has been officially announced by the Unions since the case has been pending in this Court. This Union announcement, appended to our Brief in Opposition, is reproduced as an Appendix hereto. All that is at issue is whether the Chicago public may make self-service purchases of fresh meat, on which the butchers have fully performed their tasks, after the hour of 6:00 P. M.

Conformed to the facts of this record, the question as to the labor exemption is as follows:

1. May substantially all meat market operators and unions representing all of the trained butchers in a large trading area go beyond joint bargaining as to the hours butchers shall perform their tasks and contract

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1. Although the self-service contract, doubtless because of a carry-over of the traditional language from the service market contracts, states, *inter alia*, that the butchers have jurisdiction over the "sale" of meat, the parties consistently have construed it otherwise as applied to self-service markets. In such markets the actual sale, in the legal sense, is not made until the customer has carried his meat to the store "checker" or cashier, a member of another bargaining unit, who "checks" the price and collects the required amount. Until that moment the purchase has not been consummated, title has not passed, and the customer is at complete liberty to change his mind (R. 137-138, 551-552). The "checkers" or cashiers are in a different bargaining unit (R. 138) and regularly work evenings (in stores open in the evening) to collect for grocery department items and those items, such as fresh poultry, within the butchers' "jurisdiction" but which, unlike fresh red meat, are not subjected to the 6:00 P. M. restraint.

and combine to prevent any market operator from permitting members of the public to make self-service purchases of meat, pre-packaged by butchers, except within hours limited by the combination?

The difference in statement of the question is of critical importance because, as will become apparent in this brief, while we differ to some degree with the ultimate legal conclusions advanced by the Solicitor General our basic difference with him is as to his assumptions of fact. It is our contention that the rationale and fundamental concepts underlying the Solicitor General's legal postulates applied to the actual facts of this case, necessitate an affirmance rather than a reversal of the Court of Appeals' decision.

#### **STATEMENT.**

Although the facts are largely undisputed, the District Court's overturned opinion does not state them correctly. Nevertheless, petitioners' brief, in large part, and the Solicitor General's almost entirely, rely upon the District Court's conclusions or summaries of the facts rather than upon the record itself or upon the Court of Appeals' contrary finding that the evidence "sustains the material allegations of the complaint." The Court of Appeals wholly swept aside the District Court's erroneous conclusions that the restraint was solely for labor objectives, that self-service markets could not be operated at any time without butchers on duty and that the restraint was reasonable. Thus both petitioners' and the Solicitor General's briefs are falsely premised. The case must proceed here on the basis that the complaint was proved.

### NATURE OF THE INDUSTRY.

This case grows out of the development within recent years of modern refrigeration devices and plastic wrapping materials which make it possible to prepare retail cuts of meat in advance of their purchase, wrap them in transparent wrappers, and lodge them in open refrigerated cases where buyers may see and select the cuts they desire even though no butcher is on duty near the cases. This system of marketing was a physical impossibility until 15 or 16 years ago (R. 118).

Until 1948, meat was vended at retail in the Chicago area under the time-honored system by which a butcher cut from a partially cut up carcass the portion of meat desired by the customer, wrapped it, and gave it to the customer, who either paid the butcher or the store cashier (R. 157).

### THE ORIGIN OF THE RESTRAINT ON "OPERATING HOURS."

Although the term "market operating hours" is not officially defined in the record, we believe it will be agreed that it means hours in which customers may make purchases. Despite the limitation in issue, the markets are permitted, under the contracts, to "operate" in the sense that butchers may cut and prepare meat before and after the stipulated "operating hours" provided they do so "behind locked doors" (Art. 4, Sec. 4, R. 50).

The Solicitor General, relying on an erroneous conclusion of the District Court, says that the *limitation upon marketing hours* originated after a strike in 1919; that since that time the collective bargaining agreements always have included a provision limiting working *and* marketing hours (S. G. 5).<sup>2</sup> This is not so. The 1920 contract, which

2. We use the letters S. G. to refer to the brief filed by the Solicitor General.

followed that strike, contained *no* restriction *per se* on market operating hours (D. Ex. 40, 115x). That restriction did not come into existence until 1947 (D. Ex. 40 H, Art. III(c), 128x). Prior to that time the contracts had simply provided:

*"It is expressly understood that no customers will be served who come into the market after 6:00 P.M. and after 9:00 P.M. on Saturdays and on days preceding holidays."*

Whether the small markets, prevalent in the 1920's and 1930's, in which the owner, not subject to the union contract, frequently worked alone, or sometimes with employed butchers (R. 106), were actually closed down at 6:00 P.M. and 9:00 P.M., or whether merely such workmen as were unionized went off duty at those hours, the record does not show.

Jewel commenced operating meat departments in 1934 (R. 313); they were operated upon the traditional service method until September, 1948. Since Jewel relied entirely on hired, union butchers to serve meat customers, the hours of work clauses together with the clause restricting hours within which union members would serve customers were sufficient, prior to 1948, to control the hours during which meat might be purchased. However, under a self-service system in which it is not necessary that the customer be "served" by, or have any direct contact with, the butcher (R. 118), a new clause was imposed to meet the anticipated self-service system which Jewel was investigating and advocating (R. 157). Consequently, in 1947 the restrictive clause at bar,

*"Market operating hours shall be 9:00 a.m. to 6:00 p.m. Monday through Saturday, inclusive",*

was put into the contracts.



The District Court wholly misapprehended and garbled the foregoing facts when it stated that a restriction on market operating hours as such had been in existence since 1920 (R. 662) but yet made the contrary remark that night work was not eliminated until 1947 (R. 672). Neither assertion is correct.

In 1948 Jewel introduced the self-service system into the outer suburban area (R. 157). The initial operations were highly successful and the system was extended into Chicago proper in 1953 (R. 157).

No counter service by butchers is necessary in a self-service market. However, such service may be provided by the retailer as an additional marketing attraction for customers who want special cuts not found in the self-service cases, or want advice from a butcher in connection with their purchases. Under the contracts this is referred to as "semi-self-service" (R. 45) and is the type of operation preferred by most operators, for purposes of rates of pay, hours and working conditions "semi-self-service" markets are treated and referred to as "self-service."

The self-service system has had wide public acceptance (R. 157-158). A survey made by the unions of eight chains competing with respondent in the Chicago area disclosed a marked increase between September 1957 and January 1962 in their self-service markets, accompanied by a marked decrease in service markets, *but with an increase in employment of butchers*. And the unions, as the Court of Appeals' first opinion foresaw (274 F. 2d at 221) might be the case, are bigger, stronger and wealthier than they ever were (R. 616). The figures as to those Chicago stores are tabulated below from D. Ex. 8, 34x:

	1957	1962
Self-Service Markets.....	262	377
Service Markets.....	238	83
Butchers Employed.....	1032	2050

Among the advantages of self-service and longer hours is the fact that both reduce the capital cost per item sold (R. 157, 158). Self-service also results in sale of a greater portion of the whole carcass than does the older system. This is because in service markets many customers, not being familiar with all cuts of meat, tend to request a few well-known cuts, with the result that other parts of the carcass may become surplus or unsalable. Under self-service, virtually the entire edible carcass is displayed in attractive cuts, many of which customers would not know about, or think to order, in a service market. As a result of these savings, waste is decreased and the return from the carcass as a whole is increased, so that the overall price to the customer may be reduced. Additionally the customer does not have to wait for service, can see in advance, and compare with other cuts, the piece she is interested in, and does not have to declare a preference for an inexpensive cut within the hearing of her neighbors (R. 158-159).

### **EVENING SHOPPING.**

Coincidentally with the development of self-service there also has arisen public demand for evening shopping hours (R. 313-315). This has resulted in part from the spread of population to suburban areas in which use of an automobile is a virtual necessity for shopping purposes.—Approximately 66% of the public in Chicago and the immediately surrounding area use an automobile when shopping for food; 56% of the public does not ordinarily have a car available for shopping purposes during daytime hours Monday through Friday (P. Ex. 17 at 29x).

Since there are many families in which both the husband and wife work, or in which the family automobile is not available for shopping purposes during normal daytime hours, shopping must be done in the evening or else on Saturday for the entire ensuing week. A computation from

U. S. Census figures shows that there are approximately 807,000 husbands and wives in the Chicago Metropolitan area in households in which both are employed (P. Ex. 18 C, 31x). As a result of these factors, in most neighborhoods food stores are open one or more evenings a week.

Although grocery departments of these stores are open during evening hours and fresh poultry and certain processed meats (all within the "jurisdiction" of the meat cutter unions) may be purchased, fresh red meat, by reason of the restraint complained of, cannot be purchased even though it is available in self-service cases. Over those cases a sign is posted at 6:00 P.M. reading, "Pursuant to agreement with Amalgamated Meat Cutters, market closed after 6:00 P.M." (P. Ex. 3, 4x.) The meat is visible, within arm's reach, but untouchable (R. 164, 318, 322).

Typical, representative and independent householders from various portions of Cook County testified that for various family or transportation reasons it was extremely difficult to shop during the day and that their inability to buy meat at night imposed hardships and caused them to buy less meat than they otherwise would (R. 317-327). A scientific poll made in November 1962 by a firm specializing in determination of market facts disclosed that 19% of Chicago area families had been compelled from time to time to shift their menus to unsatisfactory substitutes for meat because of inability to buy meat at night, and 34% were inconvenienced by such inability (P. Ex. 17 at 29x).

The conditions in the Chicago area which make it desirable that the public not be denied access to supplies of fresh meat during evening shopping hours are, of course, duplicated in many areas throughout the country. The result is that throughout the country as a general proposition evening sales of meat take place at such hours as the operators find suitable (R. 460-463). The only areas in which there are restraints comparable to the Chicago re-

straint are the Cleveland (D. Ex. 22), Seattle (D. Ex. 25), and Butte, Montana (D. Ex. 28) areas. In the St. Paul area evening sales are permitted, but only to the hour of 9:00 P.M. on five days a week (D. Ex. 30). As a result, the tremendously populated Chicago area stands out, as union officer Kelly confesses, "like a sore thumb with no night operations" (R. 115-116). The bland statement in the District Court's Memorandum that restraints similar to the one at bar "are in operation in other metropolitan areas" disguises, rather than fairly depicts, the record which demonstrates the public convenience that would result from unimpeded competition.

#### **PRODUCT DISCRIMINATION.**

On the subject of whether the restraint is, as the unions assert, a device to protect working conditions or is an effort to regulate competition, the record shows it does not embrace all products now and traditionally handled by butchers. In this respect, the following evidence is relevant:

The unions assert "jurisdiction" over "all fish, poultry, rabbits, meats and its kindred products, fresh or frozen." Poultry is a major item in butchers' work and in store sales. Yet it is exempt from the night ban. The reason for exempting it was that employers requested "the right to sell this [fresh] poultry because it was being sold as frozen poultry, by delicatessens and small 'Pop and Mama' stores who were in direct competition to them." (R. 613, 600.) In other words, when competition by competitors outside the combination became effective, the ban on marketing hours was lifted in the area (poultry) in which the outside competition was making itself felt.

And competition *within* the contracting group was also regulated and evened to a comfortable level. Thus when the

unions gave permission to one party to the contracts to apply certain wrappings to ham off the premises, "in fairness to *competition*" they extended the same privilege to other employers (R. 116).

### **ACTION OF THE COURT OF APPEALS.**

Acting upon the foregoing and other evidence, the Court of Appeals found that the action of the District Court in holding respondent had failed to prove its complaint was erroneous. While it did not deal with the various assertions of the District Court's Memorandum piecemeal, it pointed out that there were no factual disputes revealed by the evidence, and no question as to credibility on any relevant issue; that the evidence sustained the material allegations of the complaint, and that its "holding of the law [on the first appeal] on the facts as stated in the complaint we now adopt as our holding of the law as applied to the evidence upon remand" (331 F. 2d at 548). As to the District Court's conclusion that the restraint represented "conditions of employment" it held squarely, "we cannot agree" (331 F. 2d at 549).

It will be seen that what is involved is essentially a question of law as to whether, on the undisputed facts of this record, the District Court was correct in declaring that the market operating hours restriction was a term and condition of employment within the meaning of the labor exemption to the Sherman Act, or whether the Court of Appeals was correct in its holding that while the hours a self-service market is open for purchases of meat by the public "may incidentally affect its employees as will almost anything it does," such hours do not establish a term or condition of employment, nor is regulation of them necessary to protect hours of employment.



## ERRONEOUS FACTUAL ASSUMPTIONS OF PETITIONERS AND SOLICITOR GENERAL.

### 1. The Restraint Neither Limits Nor Fixes Hours of Work.

The assumption throughout the Solicitor General's brief that hours at which meat is sold at retail "are historically and functionally related to hours of work" is contrary to fact. Butchers have always been permitted to work overtime "behind locked doors" even in service markets (D. Ex. 40, 115x). Since 1948, when the self-service method of meat retailing was introduced, the connection between hours when meat is sold and working hours has become even more tenuous. The "functioning and history" of butchers under the self-service system, cutting and wrapping meat in a back room (R. 118), necessarily is quite different from the butchers' "functioning and history" in the old service markets in which a butcher stood at the counter, at the customer's request cut a portion of meat, prepared and weighed it and collected the money.

The Solicitor General's theory (S. G. 26) that "the marketing hours clause \* \* \* fixes the employees' work schedules" or that it "directly affected" hours of work is wholly contrary to the undisputed record and to the Court of Appeals' observation in its first opinion that the right to set marketing hours, under the facts of this case, is not a "direct, frontal attack" upon working hours (274 F. 2d at 221).

The *market operating hours* clause (R. 51) provides that markets may be open for 54 hours a week, viz., for six 9-hour days, whereas the *hours of work* provisions (R. 49) provide for a regular work week of five 8-hour days. The *market operating restriction* fixes neither the minimum nor maximum hours, nor the times, nor particular days of an employee's *work schedule*, for the contract provides that butchers may work before, or after, the 54 hour mar-

keting schedule, provided they do so "behind locked doors" (R. 50). Their work may commence as early as 8:00 in the morning and extend (at premium rates) to whatever hour at night after 6:00 p.m. the employer, in his "discretion," believes necessary (Art. 4, Sec. 4, R. 50). Market operating hours and working hours thus are wholly different and have not been the same for many years. In short, while the contract places an absolute bar on customers purchasing meat at any time before 9:00 in the morning or after 6:00 in the evening it permits butchers to work both earlier and later.

## 2. No Necessity for Night Work.

Akin to the erroneous assertion that the marketing hours clause fixes work schedules is a corollary assertion that self-service meat departments cannot be operated during evening hours without employees being on duty therein, from which premise it is asserted that working hours necessarily determine the hours within which purchases may be made. The Solicitor General goes so far as to assert (S. G. 39) that "Marketing hours and working hours for a sales force cannot be separated," and that (S. G. 57) " \* \* \* the scheduling of working hours for retail clerks necessarily determines the hours a store will be open." *Those sweeping generalizations may be true where clerks are required to wait upon customers but are not true as applied to a store vending meats by customer self-service selection. Butchers under self-service<sup>3</sup> are not salesmen or*

3. It is to be noted that the contract (R. 45) defines three types of markets: (1) Complete "self-service," (2) "Service" and (3) "Semi-self-service" in which, although meat is made available on a self-service basis, "custom cutting" is offered for those who prefer it. The fact that Jewel prefers, if it can have it, "semi-self-service" for most evening sales, does not detract from its right, under the contracts to offer pure or complete self-service. Nor are petitioners in any position to offer the merchandising opinion that only "Semi-self-service" is practical or possible when their own contracts provide for "Self-service" as well.

clerks at all. Rather they are artisans who, day or night, prepare the meat and leave it in a place where the customer may select it. Their hours of work need no more conform to the hours customers pick up the meat than the hours of work of candy makers need conform to the hours during which the public buys candy bars from automatic vending machines.

The Solicitor General builds his argument by enlarging upon an overturned merchandising opinion of the District Court (R. 672) that it is "*impractical*" to operate without butchers on duty. The District Court's conclusion as to "*impracticality*" was swept aside by the Court of Appeals upon undisputed proof:

(a) That in fact plaintiff does so operate several hours for several evenings each week in its extensive operations in Indiana, not only without customer complaint (R. 243-246, 289-295), but with the ratio of evening meat purchases to evening grocery purchases remaining constant with the daytime ratio (R. 290-294);

(b) That fresh poultry, whole or cut up, and fresh sausage, fully as perishable and delicate as fresh red meat but which, because of competition from outside sources, are exempt from the ban (R. 47, 51-52), are regularly vended at night by the major operators even in Chicago through the same self-service cases in which the meat is reposing; that there is "no faint reason" why fresh red meat cannot be handled in the same way (R. 647). Although petitioners offered alleged "expert" testimony that a meat cutter always *ought* (in their view as to how a store should be run) to be on duty, they offered utterly no evidence as to why it is "practical" to permit self-service purchases of pre-packaged fresh poultry "provided that Union members stock the [self-service] cases before 6:00 p.m.," (R. 47) "but impractical" to do so with fresh red meat.

The Solicitor General is under the mistaken belief that Jewel raised the matter of permitting self-service purchases of meat without butchers on duty for the first time in the closing moments of the 1961 negotiations (S. G. 6, 48). The possibility of sales without butchers or other attendants on duty is apparent from the system of merchandising, and is envisioned by the contracts which provide (R. 45) for pure or complete "self-service," "service" and "semi-self-service" in which meat is made available on a self-service basis, but "custom cutting" is offered for those who prefer it. The possibility was set forth in paragraph 11 of the complaint (R. 20), which was filed July 29, 1958 and which alleged "that there is no necessity for members of the defendant unions being on duty in plaintiff's stores at all hours at which meats are actually purchased by customers; that the incidental tasks of arranging the cuts in the cases \* \* \* need not be performed continuously throughout store hours and can be performed by others *or can be performed by butchers some hours prior to the ending of store hours.*" This was a material allegation of the complaint which the Court of Appeals found was sustained by the evidence (331 F. 2d at 548).

The Solicitor General's brief (pp. 6, 22), misreading the overturned discussion of the District Court, proceeds upon the erroneous assumption that Jewel proposed night operations without butchers being on duty only on November 16, 1961 "as negotiations were 'breaking up'." However, the undisputed record as to 1961 is that on September 29, 1961 the Unions had asked what price the employers would pay for night operations (R. 596); on November 2, 1961, the industry as a whole asked what the union position would be on night sales for three nights a week, if it was assumed that *all* provisions of a contract had been settled except market operating hours (R. 535). The

Unions took a 35 minute recess and then answered that to negotiate night hours on the limited basis of three nights a week "would be conspiring with a group of employers to limit operations to certain nights";<sup>4</sup> that the Unions were willing to negotiate for seven days a week, 24 hours per day of operation (record erroneously reads 20 hours); that only if *all* employers would present such a demand would the Union react with a demand covering such a request (R. 536).

Further negotiations were held on November 3 and 13, 1961 (R. 537). On November 13, Jewel made the November 2, 1961 proposal on behalf of itself alone (R. 538, P. Ex. 10). What actually took place at the final meeting on November 16, 1961 (R. 539) was not the belated presentation of the proposal but a request by Jewel, "as we were breaking up" (R. 543), that its proposals for night operations either with or without butchers on duty be put to the Union membership regardless of whether the Union officers recommended them. A comment in the District Court's Memorandum, erroneously relied on by the Solicitor General (S. G. 48), that defendant Unions "questioned the seriousness of that proposal under the circumstances" (R. 667) was an egregious invention by the District Court without a syllable of evidence to support it.

The facts were that the matter had been agitated seriously for years; this suit was pending to determine it; and the Unions regarded it so seriously that Union officer Kelly fully explained it to the membership on November 26, 1961 (R. 596, 598) which then voted upon the proposals; Jewel's offer number 1 (see P. Ex. 10, 19x, also set forth Pet. br. p. 41), which in substance provided for night self-service

4. It may incidentally be observed that this response exposes the unexplained and inherent self-contradiction of petitioners' position, viz., it would be "conspiring" to limit night operations to three nights a week but it is not "conspiring" to cut them off completely! (R. 555).



purchases at such hours as Jewel saw fit without butchers being required to be on duty after 6:00 P. M. and with a guaranty that no other employees would be permitted to stock or rotate the meats in the self-service cases, was rejected. Jewel's offer number 2 (P. Ex. 10, 20, 19x), which provided for elimination of the night ban in both service and self-service markets, forbade employees other than members of the Meat Cutters to stock or rotate meats, provided for time and one-half for all work after 6:00 P. M. on Mondays through Saturdays, and required that a journeyman meat cutter be on duty at all hours that fresh meat was offered for purchase, was likewise rejected.

As Mr. Kelly twice put it, the Unions voted to "accept" the proposal of the other employers that the ban on night purchases be continued (R. 598, 138-139). This was in conformity with the long-standing policy of the Unions that all of the industry should conform on the pattern as to hours of competition regardless of whether employees did or did not work; that it was unethical for Jewel to seek different hours. As Mr. Kelly put it:

"A. I was attempting to point out that it had been a part of the industry group throughout the entire negotiations—the majority of the industry—that they had seen fit to accept the union contract proposal, and in view of that it was our view that Jewel should not be in any different position. That was the position of all of the contract negotiators.

"Q. And that is all that the union and the industry would conform on the pattern as to hours of competition?

"A. Once the agreement was reached between the majority, yes, sir, that is correct.

"Q. And that would govern the hours of competition in the sale of meat in Chicago?

"A. That is correct, sir." (R. 123-124.)

Petitioners assert in their Statement (p. 50) that some "expert opinion" holds that fresh red meat cannot be "satisfactorily" sold in a self-service meat department without employees on duty because: (a) in handling packages customers may disarrange or tear them; (b) the cases may become depleted; (c) there is no one to assist the customer in selecting meat or to advise as to its preparation. This is a question of business judgment rather than a question of law; it is not up to Courts to tell merchants how to run a store. Moreover it is irrelevant opinion, not fact. However, the opinions tendered by the unions were without validity. Meindel admitted he had "no knowledge" as to Jewel's night operations (R. 471) and expressed merely a "personal opinion" (R. 451); Kokalis was utterly without experience in night operations without help on duty and agreed that his opinion was "far less valuable than that of men who have actually witnessed such an operation" (App. 419) such as Jewel's Operating Manager Brewer (R. 163) or Manager Mayer (R. 643-647). Jewel's views as to market practices are those of a superior market operator for its ratio of meat to grocery sales very substantially exceeds the national average—the "whole success of Jewel has been built around their [meat] markets" (R. 147-149, 463-464). Moreover, as one of petitioners' supposed "experts" admitted the customer is the one who finally determines, by his patronage or lack of patronage, whether an operation is satisfactory (R. 469-470). This was pointed out in the first opinion of the Court of Appeals (274 F. 2d at 221).

The lack of factual merit, indeed the irrationality, of the claims that markets cannot operate in the evening without butchers on duty, and the accompanying contention that the restriction on market operating hours arises solely from the desire of Chicago butchers not to work at night, is demonstrated by the simple fact that *if* markets could not operate

at night without butchers (or other attendants on duty), there is nothing to fear from Jewel's desire to so operate, for the operation would quickly fail. So far as the butchers' asserted desire not to work nights is concerned, there is no power on earth (under the laws of this country) that can compel butchers to work when they do not wish to, nights or daytimes, and the Unions so boast (See Appendix).

### **3. The Mythical "Labor Objectives" Advanced in Support of the Restraint.**

In the Statements of petitioners, and the Solicitor General, and woven into their Arguments in support of their contention that the restraint on evening sales is a "term or condition of employment" are the following assertions, each of which is factually erroneous:

a. The market limitation fixes hours of employment: (Disposed of *supra*, p. 12).

b. A self-service meat market cannot operate at night without employees being on duty to serve customers: (Disposed of *supra*, p. 13).

c. If a self-service market operates at night without butchers on duty, the work load of the butchers during the day would be increased by the necessity of preparing cuts and stocking the cases for evening sales (or restocking them in the morning): Work loads are a bargainable matter. If, because of evening sales, a self-service market appreciably increased its volume so that additional work was required of butchers near the close or opening of a day, Jewel could be required to bargain over increasing the staff so that no individual would be overworked. Stores for many reasons have changes in volume of business and size of staff (R. 613). There is no history of a failure of Jewel to adjust the size of the work force to the quantum of business of any particular store (R. 101).

d. If a self-service meat department were operated without butchers on duty, other employees might usurp a portion of the butchers' work jurisdiction by giving special night service to customers: This theory is advanced by the *Solicitor General* without reference to the evidence and by petitioners under a flat misstatement thereof. The record is undisputed that fresh poultry, a large item in market sales, has been sold, self-service, in Chicago for seven years without history of other employees preempting the butchers' normal work. While union agent Kelly testified generally that as to "delicatessen" items, experience indicated that somebody might rearrange or restock the cases, no factual evidence of such practice was offered.

The law proceeds upon the assumption that all parties proceed lawfully and do not breach their contracts. It no more may be presumed by a union that Jewel would breach a contractual commitment it offered that non-butcher employees would not touch a piece of meat (P. Ex. 10, 19x, R. 138-139) than Jewel may be permitted to say it will not make a contract with a union because it thinks the union will breach it. A contract guaranteeing against invasions of butchers' work could be enforced by an arbitrator or a court.

We heretofore have noted that Jewel has sold meat at night throughout its Indiana territory for several years without butchers being on duty save for nights when demand was heaviest. That actual experience would have produced proof of "cheating" on the butchers' work if such "cheating" had existed. No such proof was available. To meet this deficiency, petitioners, on the eve of trial, sent a disgruntled former Jewel butcher<sup>5</sup> to Indiana to trap some

5. Walter Santeler (R. 474), who, while employed by Jewel as a market manager, permitted stale meat in his meat cases and adulterated hamburger with cheaper ground up beef hearts. (This would tend to increase his profit showing.) When his offenses were detected and confessed he was given a warning (P. Ex. 22, 33x, R. 652-653) that precluded further advancement. He soon quit his job and went to work for a competitor (R. 496-497).

Jewel employee into giving him a special piece of meat. The entrapper visited three markets. In one of them he asserted he found an apprentice working in the meat workroom, and, posing as a customer, induced him to bring out two special rump roasts, of which he selected one, and later laid it aside. This episode of entrapment is misrepresented in petitioners' Brief (p. 49) as one in which "two part-time grocer clerks" were involved, one of whom brought the roasts "to the customer." Even in the entrapper's questionable testimony, grocery clerks were not involved, but an apprentice butcher who had not yet become a full-fledged meat cutter (R. 495). There is utterly no evidence that any bona fide customer ever received special service.

The speculation in the Solicitor General's Brief (p. 48) that "If the meat department were open while there was no butcher on duty, there would be substantial likelihood that nonbutchers would do butchers' work" accordingly is without support in the record. When the Solicitor General supposes (p. 49) that an especially good customer might ask to have a round steak ground into hamburger, and that the resulting temptation to permit nonbutchers to do the work "would be severe, or so the Union might feel," he is indulging in mere unrealistic imagination. We respectfully suggest that even under the present restriction the round steak actually is in the store during evening hours (for that matter, the hamburger is too); the night manager and various grocery personnel are in the store; and there now is more temptation for someone to grind the round steak (or let the customer take it unground) so that the customer might have meat of some variety, than there would be if night sales of meat were permitted. If Jewel has been able to resist the present temptation, as it has, there is no reason



to believe it would not resist the less impelling temptation the Solicitor General imagines.<sup>6</sup>

### **The Negotiations On Night Hours.**

Petitioners offered much evidence as to the collective negotiations. It is our view that much of this is immaterial, for a contract by businessmen restraining their hours of competition in the face of reasonable public demand for longer hours of access to food is, on its face, as the Solicitor General's brief concedes, a Sherman Act violation. When unions enter into such an illegal contract with businessmen they are not shielded from the antitrust laws even though the contract results from collective bargaining, bilateral or multilateral. The parties have entered into a contract to accomplish an unlawful end, market control or manipulation; they are using lawful means, a contract, to accomplish an illegal end and are therefore guilty of conspiracy within the meaning of the Sherman Act. Nevertheless, because petitioners' brief refers in massive detail to the source of bargaining, some reference to the evidence is necessary for a proper understanding of the record:

Preparatory to the 1957 negotiations, Jewel sent its negotiator, Vorbeck, to call on Charles H. Bromann, Secretary of the trade association, Associated Food Retailers of

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6. Another instance of immaterial imaginative matter is the robust declaration (S. G. 29) against "sweated labor." In a case in which the unions boast they "have the keys to the store" (R. 111), where the contracts contain rigid restrictions against work over eight hours a day save at premiums, and with the last one carrying a basic pay of \$134 a week for journeymen (P. Ex. 9 p. 13, 18x), the repetition of a battle cry of a half century ago is mere emotional oratory apropos of nothing in the record. It stands in strange contrast to the Government's inability to shed but a brief and ineffectual tear for the plight of consumers under the restraint at bar who are told, in the face of union declarations that if night operations are to come to Chicago "it will have to be done in court" (R. 115), to look to further fruitless collective bargaining (S. G. 49).

Greater Chicago, Inc.,<sup>7</sup> in an endeavor to induce Bromann to drop his opposition to night operating hours. Vorbeck accused Associated, which represented some 300 so-called independent operators, as being the principal opponent to evening sales. Bromann did not deny the accusation when it was made even though he was then threatened with what became this lawsuit, nor did the unions ever call him to the stand to do so (R. 558-559).

The District Court's opinion erroneously states that Associated, through Bromann, joined in an all-employer offer of November 15, 1957, demanding the elimination of the restriction. This is not so. On one day only of the 1957 negotiations, Associated, rather than joining in any movement to eliminate the restraint, temporarily joined in a quite different proposal to retain the basic restraint but to soften it to one which would permit operations on Friday nights beginning with the second year of the contract term, with a male attendant to be on duty (R. 396). The record is undisputed that at no point did Associated either denounce, or agree to waive, the restriction in its entirety.<sup>8</sup>

With the matter of operating hours drawn into the bargaining, together with numerous subjects concerning wages, working conditions and fringe benefits, all items concerning efficiency and costs, Jewel was in a position where it was forced as a practical matter to balance evils and costs and settle for what was attainable at any given time or face the catastrophic costs of a strike (P. Ex. 19, 32x) in which it would be standing alone. At each succeeding negotiation after 1957 Jewel pressed for night operations but met only with bafflement (R. 134).

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7. Bromann and Associated are petitioners in No. 321, this Term, in which a petition for certiorari has not yet been acted upon.

8. The Solicitor General's belief (S.G. 46) that "Associated opposed this demand [for the marketing clause] and yielded to it only reluctantly," is wholly unfounded.

In 1961, when the union was asked, assuming all other provisions of a contract were satisfactorily settled, under what conditions it would agree to evening sales on three nights a week, it responded that to negotiate on the limited basis of three nights a week would be "conspiring with a group of employers to limit operations to certain nights and certain hours;" that only if the entire industry would be willing to negotiate for seven days each week, twenty-four hour a day (record erroneously reads twenty) operations, would the union react with a demand covering such a request (R. 535-537). In other words, the unions proposed, instead of an industry-wide restraint against evening sales, an industry-wide restraint for continuous operations.

Although the unions profess to assert that market operating hours is a negotiable subject, the evidence shows without dispute they have never taken a position as to what would be a proper price for such operating hours with or without union butchers on duty. Jewel® has offered everything from 25¢ or 50¢ a night to time and one-half, but the unions never have engaged in bargaining on the subject (R. 616-617).

#### **THE EVIDENCE AS TO INTERFERENCE WITH BUSINESS COMPETITION.**

Since the contracts contain elaborate provisions fixing butchers' working hours and their jurisdiction, it is apparent that the additional provision restricting "market operating hours" was wholly unnecessary if all that was sought by it was to fix hours of labor. In this case, like any other, the conspirators were loath to confess their real objectives. However, the evidence came out bit by bit and shows that the selling hours restriction contributed only one thing to the agreement—it eliminated convenience of shopping hours as an element of competition.

The evidence disclosed that as of 1957 the operators were divided as to whether to operate at night. Bromann, the chief officer of Associated Food Retailers, which represented some 300 operators, by far the largest single block of stores (R. 612), as we have seen, was the principal opponent to evening sales. Any indications from the opposing briefs that Associated ever changed from a position that hours of sale should be regulated is erroneous. The record is wholly clear that, unimpeded by the restraint, at least some operators including, of course, respondent would have met public demand for some evening hours and that the restraint could be effective only with union and majority of industry support.

The evidence that the objectives sought by the unions through the marketing clause was not regulation of hours of employment but regulation of the market and competition and, hopefully, assurance of profits, is clear: One objective was to benefit service markets as against self-service markets by preventing consumers from trading at the latter when service operators might not find it economical to operate. Another was to bring about an industry structure which, or so it was believed, would facilitate the transfer of butchers from the employee to the owner class; still another was to protect "small" operators. Thus union officer Kelly testified:

"Q. Does the relationship of the service market to the self-service market play a part in the unions' opposition to operating a *self-service meat department, without employees* on duty after 6 P.M.?

"A. Yes, it does.

"Q. What is that?

"A. Well because one is competitive against the other. That [is] if a self-service meat department were open at night *without benefit of help* it would become

necessary that the service market be open likewise." (Emphasis supplied; R. 604.)<sup>9</sup>

The chief spokesman for petitioners, in a letter to the members of his union replying to newspaper articles which were critical of the union's opposition to evening hours, expressed the following views:

"A very few greedy chain stores in Chicago and suburbs who only want to squeeze *the small operator to death* are now screaming that in the interest of 'Mrs. Housewife' they must keep their meat markets open at night.

"True American ideals call for a free enterprise system wherein our members should have rightful opportunity of some day owning their own business. Under the selfish chain store plan this becomes next to impossible because they are attempting to 'gobble up' every possible last dollar from the consuming public." (P. Ex. 2, 2x.)

When these statements were read during the trial, Mr. Kelly elaborated upon them as follows:

"I meant by that, that a working butcher paid for wages, assuming he was a good butcher, got good wages, saved his money, might some day accumulate enough to make a down payment on a butcher shop and open his own store. *I had hoped that the business world should be so regulated that my members could have the opportunity of readily progressing from the employee class to the owner class.*" (See in expanded form R. 95-96.)

Petitioner Niclubowsky, representing two of the locals flatly confessed an intention to soften competition between the so-called "chains" and so-called "independents" (several of whom operate more than one store R. 607-609), say-

9. Note the admission that a self-service market can operate, at least for limited evening hours, without employees (butchers or otherwise), being on duty in the meat department.



ing "We are going to protect the independent fellow" (R. 557).

Finally, the union's concern with profits is confessed in the following revealing passage from Mr. Kelly:

"When we have seven nights, which, if Jewel is successful, we ultimately will have, *then nobody profits*, and those who cry the loudest will be the first to want out." (R. 131.)

We do not think that Mr. Kelly's prediction of seven nights, save in atypical communities, is correct, but his objective of stabilizing profits for market operators is apparent.

In the earlier stages of the case petitioners boldly argued that the unions had an "interest in preventing dislocation of the equilibrium between service and self-service markets" (Br. for Appellants on first appeal, Court of Appeals, p. 55). The thrust of the theory was that if self-service markets were open at night without butchers on duty they would probably attract trade that otherwise might go to a service market. As the anti-trust significance of this argument became apparent (S. Ct. 38), it has been relegated to a minor position by petitioners (Br. p. 70 and, of course, is not adopted by the Solicitor General. Whether there ever was any economic validity to this view is not clear. It is by no means certain that customers of a service market would not still prefer service rather than self-service regardless of hours. In any event, the objective of the unions was not a true labor objective, but was to protect the less efficient or less pleasing operator against the competition of one who better pleased the public.

## SUMMARY OF ARGUMENT.

Almost any business action taken by an employer can be shown to have at least some effect upon profits of the business and upon terms and working conditions of its employees. If unions and employers were to be immune from the Sherman Act when they combine to restrain commercial trade, there would be no respect in which the national anti-trust policy would be safe from assault by such combinations, for in nearly every instance both the firm and the union members can be shown to receive at least an indirect benefit from the restraint.

The necessity of protecting the market and consumers against the anti-competitive tendencies and temptations resulting from the unionization of all workers in a product line is greater today than ever before. The exemption of labor unions from full operation of the Sherman Act must be found in the statutory provisions of the Clayton and Norris-LaGuardia Acts, and those enactments limit the exemption to activities directly concerning terms and conditions of employment. "Market operating hours" is a condition of the business rather than a term or condition of employment.

The unbroken line of authority extending from *United States v. Brims*, 272 U. S. 549 (1926), most fully explicated in *Allen Bradley Co. v. Local Union No. 3*, 325 U. S. 797 (1945); and running through the instant cases, demonstrates not merely that the Court has never wavered from its view that unions cannot combine with businessmen to restrain commercial competition, but demonstrates also the necessity of adherence, in the public interest, to that view.

The Solicitor General's attempt to create classifications and categories of exemptions for commercial restraints mutually arranged by firms and unions would devitalize the *Allen Bradley* doctrine; the categories and tests are imprecise, illogical and would be impossible of judicial administration, for essentially they involve an inquiry into motivation in lieu of an objective test as to market restraint. Moreover, whether the Sherman Act should be further relaxed in favor of unions is a question for the Congress, not the Courts.

The inappropriateness of "primary jurisdiction" over antitrust cases involving labor unions in the National Labor Relations Board is conclusively demonstrated in the Solicitor General's brief.

## ARGUMENT.

## Introductory.

Almost any business action taken by an employer can be shown to have at least an indirect effect upon the profits of the business and the wages, hours or working conditions of its employees. If unions and employers were to be immune from the Sherman Act when they combined to restrain commercial trade for their mutual benefit, or for the benefit of one of them, there would be no respect in which the national antitrust policy against restraints upon competition would be safe from assault by combinations involving labor unions.

Recognizing that Congress had intended to confer no such sweeping immunity upon labor organizations and persons acting in concert with labor organizations, the Court of Appeals held that the antitrust exemption of labor when negotiating industry-wide agreements with employees is limited to bargaining directly upon terms and conditions of employment, and such additional provisions as may be necessary to protect those terms and conditions. In so deciding, the Court of Appeals, no matter how emphatic its language, promulgated no new doctrine but merely followed *Allen Bradley v. Local Union No. 3*, 325 U. S. 797 (1945).

This Court repeatedly has ruled that labor's exemption from the Sherman Act is not a general one but is a limited statutory exemption of activity "concerning terms or conditions of employment." The words "of employment" are a limitation upon the words "terms" and "conditions". Labor is not given an exemption to engage in restraints concerning conditions of the business itself, even though such conditions may have an effect upon the wages or hours or schedules of work that labor bargains for. (*Apex Hosiery*

*Co. v. Leader*, 310 U. S. 469 (1940); *Allen Bradley Co. v. Local Union No. 3*, 325 U. S. 797 (1945)).

Presented within the four corners of the contracts at bar are wholly legal and exhaustive provisions as to wages and hours of employment, together with the marketing clause which, as the Solicitor General admits, "undeniably restricts commercial competition in selling meat by limiting the hours at which meat may be sold even at self-service counters and stores" (S. G. 14-15). The line between the two classes of contractual provisions is clear, and while petitioners and the Solicitor General chide the Court of Appeals for expressing what is *outside* of the labor exemption in the terminology of "proprietary function," that terminology, taken in context, is merely another way of referring to matters other than "wages, hours and conditions of employment" which were called "entrepreneurial questions" or "prerogatives of private business management" by the concurring Justices in *Fibreboard Paper Products Corporation v. National Labor Relations Board*, No. 14 this Term.

There is no problem here of protecting a union wage or hour scale against non-union scales such as underlay *Duplex Printing Press Co. v. Deering*, 254 U. S. 443 (1921), *United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344 (1922), *Coronado Coal Co. v. United Mine Workers*, 268 U. S. 295 (1925), *United States v. Brims*, 272 U. S. 549 (1926), *International Brotherhood of Teamsters v. Oliver*, 358 U. S. 283 (1959), and, although the question was not posed in an anti-trust posture, *Fibreboard Paper Products Corporation v. N. L. R. B.*, No. 14 this Term; neither is any other group of workers, organized or unorganized, seeking to take over the butchers' work as was the nature of the controversy underlying *United States v. Hutcheson*, 312 U. S. 219 (1941); nor is there a failure to bargain over employment security such as was involved in *Telegraphers v. Chicago & N. W. R. Co.*, 362 U. S. 330 (1960).



All that is involved, whatever may have been the Court's impression at the time it granted certiorari, is a situation in which a group of affiliated local unions, having an admitted monopoly of the supply of butchers in the Chicago area (R. 90-128), dealing with a large number of entrepreneurs in a competitive situation much as Local No. 3 of the Electrical Workers Union dealt with electrical contractors in New York (*Allen Bradley Co. v. Local Union No. 3*, 325 U. S. 797 (1945)), after making a contract fully fixing wages, hours and conditions of employment, went beyond a labor agreement to make one inhibiting the degree of competition in the product market.

We respectfully suggest that one way of emasculating the Sherman Act insofar as it pertains to union activities is to misconstrue the law; another way is to construe the law with a reasonable degree of correctness but refuse to face the facts of any case which requires its application. We respectfully suggest that the opening sentence of the Solicitor General's Introductory Argument poorly conceals his antipathy to the Sherman Act as applied to labor unions, and that presentation for the United States suffers from its refusal to face the facts of this record.

## I.

**THE MARKET OPERATING HOURS CLAUSE VIOLATES  
THE SHERMAN ACT.**

## A.

**The Sherman Act Applies to All Contracts, Combinations and Conspiracies of Labor Unions to Restrain Competition in the Product Market; Only Contracts or Activities Directly Concerning Wages and Conditions of Employment Are Exempted by Either the Clayton or the Norris-LaGuardia Act.**

The necessity of protecting the market place and consumers against the anti-competitive tendencies resulting from the unionization of all workers in a product line is greater today than ever before.

The country has witnessed in the last twenty-five years a tremendous increase in the complete, or virtually complete, unionization of workers in complete lines of product activity. The Solicitor General agrees (p. 14) that "labor-management negotiations have increasingly come to involve many or even all of the firms competing in a product market and extend to restrictions upon commercial competition among employers which would plainly violate the antitrust laws if imposed by the business firms acting in their own interests \* \* \*." The observation could scarcely be put more forcefully, but to it we suggest should be added the fact, made clear in this record, that in many instances the negotiations, as here, involve not only "many, or even all, of the firms competing in a product market," but, on the other side, a single union or its equivalent, a group of affiliated unions, as here, acting as a unitary force. The opportunity and the temptation thus not only are ever present, but are growing, for the firms or the unions, or both, to suggest that the selfish interests of the firms and

the members of the union can best be served by non-competitive commercial practices at the expense of the consuming public. That this is violative of the intrinsic core of the Sherman Act is apparent. The present is no time to relax antitrust inhibitions on industry-labor combinations that have power to oppress consumers.

In *Apex Hosiery Co. v. Leader*, 310 U. S. 469 (1940), in answer to a contention that Congress intended to exclude labor organizations and their activities from the operation of the Sherman Act, the Court said at pages 487 and 488:

“ . . . To this the short answer must be made that for the thirty-two years which have elapsed since the decision of *Loewe v. Lawlor*, 208 U. S. 274, this Court, in its efforts to determine the true meaning and application of the Sherman Act has repeatedly held that the words of the act, ‘Every contract, combination . . . or conspiracy in restraint of trade or commerce’ do embrace to some extent and in some circumstances labor unions and their activities; and that during that period Congress, although often asked to do so, has passed no act purporting to exclude labor unions wholly from the operation of the Act. On the contrary Congress has repeatedly enacted laws restricting or purporting to curtail the application of the Act to labor organizations and their activities, thus recognizing that to some extent not defined they remain subject to it.”

Moreover, the Court was extremely careful in *Apex* (p. 293) to distinguish the conduct there—a strike, unilateral action, to secure a closed shop which was then a lawful condition of employment—from a contract between a labor organization and employers which restrained commercial competition, distinguishing *United States v. Brims*, 272 U. S. 549, discussed *post*.

And if there could remain any doubt that unions, either acting alone, or in conjunction with business, are not

wholly immune from the Sherman Act, even after adoption of Norris-LaGuardia, it is removed by Justice Frankfurter's observation in *Brotherhood of Carpenters v. United States*, 330 U. S. 395, 413, 414 (1947):

"Before the *Coronado* decision and since, repeated efforts were made to have Congress take trade unions from under the Sherman Law. Regardless of the political complexion of Congresses, these efforts have consistently failed. Equally futile have been efforts to have this Court read the liability of trade unions out of the Sherman Law by judicial construction. This Court undeviatingly held that trade unions are within 'the general interdict of the Sherman Law,' although later enactments have withdrawn specifically enumerated practices of labor unions from the scope of that law."

The "withdrawals" of which Justice Frankfurter spoke are quite narrow, as we shall see

There have been only two legislative enactments partially relieving unions from the operation of the Sherman Act. They are the Clayton Act of 1914 and the Norris-LaGuardia Act of 1932. Although the brief of the Solicitor General does not directly assert that the National Labor Relations Act of 1935, as amended in 1947, was intended to create an exemption to the Sherman Act, the briefs both for the United States<sup>10</sup> and for the petitioners ambivalently and

10. The position of the United States as to the bearing of the National Labor Relations Act in determining the scope of the antitrust exemption is seriously contradictory and confusing. In the Memorandum submitted during the certiorari proceedings, the Solicitor contended (pp. 3-4) that the words "terms or conditions of employment" should receive the same interpretation in Norris-LaGuardia as in National Labor Relations. Point IA of the Solicitor's brief (p. 18) would seem to take the same position. Yet the position is abandoned on page 63, which states, "It would seem, moreover, that there may be positive gains in separating the interpretation of the phrase 'terms or conditions of employment' for the purposes of the National Labor Relations Act from the determination of what agreements between labor unions and

frequently treat it as having at least a bearing upon the scope of the so-called antitrust exemption. We respectfully suggest that not a line of legislative history is, or can be, cited for the proposition that Congress believed it was in any way impinging upon the Sherman Act either in adopting the National Labor Relations Act originally in 1935 or in amending it in 1947.

What we are dealing with is a matter of statutory construction of the Sherman Act as affected by Clayton and Norris-LaGuardia, both of which concededly were designed to afford labor organizations some relief from the Sherman Act. To the extent that the exemption cannot be found in the language of Clayton or Norris-LaGuardia, it does not exist because, "In dealing with problems of interpretation and application of [the Norris-LaGuardia Act, the courts] have no power to change deliberate choices of legislative policy that Congress has made within its constitutional powers." *Sinclair Refining Company v. Atkinson*, 370 U. S. 195, 215 (1962).

Section 6 of the Clayton Act (15 U. S. C. 17) provides only that nothing in the antitrust laws shall be construed to forbid unions (and agricultural associations) from "lawfully carrying out the legitimate objects thereof." And Section 20 of that Act (29 U. S. C. 52) provides only that no injunction shall be granted in cases growing out of a dispute "concerning terms or conditions of employment, unless necessary to prevent irreparable injury," etc.

The Norris-LaGuardia Act is even more explicit. Section 1 of that statute (29 U. S. C. 101) takes from the courts the right to issue injunctions only in cases involving or growing out of a "labor dispute." The term "labor dispute" is defined by Section 13 to include only contro-

competing employers violate the antitrust laws." We suggest the latter statement should serve to undo the complexities created by the earlier ones.



versies concerning (a) "terms or conditions of employment," or (b), in no way material here, "the association or representation of persons" for collective bargaining purposes (29 U. S. C. 113).

And the declaration of policy in Norris-LaGuardia should be considered, for in *United States v. Hutcheson*, 312 U. S. 219 (1941), Justice Frankfurter, one of the draftsmen of the Act, in at least three places (see pages 231 and 234) bottomed the Court's opinion upon references to the Congressional expressions of national policy made in Norris-LaGuardia and used that policy as the touchstone for interpretation of the Act. Reference to the declaration of policy (29 U. S. C. 102) again shows that the purpose of the Act was to assure the individual non-organized worker of the right of self-organization "*to negotiate the terms and conditions of his employment.*"

The words used in both Clayton and Norris-LaGuardia, whether they be "terms and conditions" or "terms or conditions," are qualified and limited by the words "*of his employment*" or "*of employment.*" That the entire phrases are limitations upon the scopes of the enactments is as apparent here as it was recognized to be by the unanimous decision in the recent *Fibreboard* case with respect to the similar phrase in National Labor Relations Act. That the specification "*of employment*" limits the words preceding it and excludes everything else, admits of no argument. The statutory phrases cannot rationally be read as "*conditions of the business enterprise with which the employee is connected.*"

The only other place that petitioners can find statutory language creating an exemption is in Section 6 of the Clayton Act, which provides that nothing in the antitrust laws shall be construed to forbid unions (and agricultural associations) from lawfully carrying out the legitimate objects

thereof. It scarcely can be contended that it is a legitimate object of a union or lawful for it to enter into an agreement with employers to restrict competition in the vending of the necessities of life, and no one appears to seriously so contend in the case at bar. *Maryland and Virginia Milk Producers Assoc. v. United States*, 362 U. S. 458 (1960), clearly establishes that Section 6 does not authorize its beneficiaries "to engage in predatory trade practices."

### B.

**In Construing and Applying the Labor Exemption This Court Has Never Permitted It to Extend Beyond Contracts and Agreements With Employers, or Unilateral Activity, Directly Concerning Terms and Conditions of Employment.**

In *United States v. Brims*, 272 U. S. 549 (1926), Chicago manufacturers of millwork, building contractors who purchased such woodwork for installation, and unions whose members were employed by both the manufacturers and the contractors, entered into an agreement (See facts recited in 6 F. 2d 98) fixing terms of employment, hours of labor, and compensation. Beyond that the agreement provided that there was no restriction against the use of any manufactured material except non-union and prison-made. A group of manufacturers in Wisconsin, employing non-union labor at lower wages, theretofore had been selling substantial amounts of millwork in the Chicago market cheaper than Chicago manufacturers who employed union labor could afford to. The object of the combination was to eliminate the Wisconsin competition. The Chicago manufacturers, relieved from the competition, increased their output and profits, more union carpenters secured employment and their wages were increased; nevertheless the Court held that the combination violated the Sherman Act.

We suggest that *Brims* is of significance because, as here, the contract contained both legal and illegal provisions. Unlike the facts at bar, and more favorable to the unions, a definite labor objective was involved, i.e., the protection of union wage scales against competition of non-union workmen working for lower wages. Yet the agreement could not stand. *Brims* was recognized and reaffirmed in *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 501 (1940).

*Brims* was followed by *Local 167 v. United States*, 291 U. S. 293 (1934), involving restraint of wholesale and retail trade in live and freshly dressed poultry in New York City. In that case wholesalers allocated retailers among themselves and agreed to increase prices, and secured the co-operation of a local union the members of which refused to handle poultry for market men who refused to join the conspiracy. It does not appear that a contract was involved, but it is abundantly clear that a union co-operated with wholesalers and retailers to allocate territories, allocate customers, and to raise prices. This Court, relying in part upon *Brims*, held that an injunction should issue.

In 1941 came the renowned *United States v. Hutcheson*, 312 U. S. 219, from which petitioners (p. 104) lift the truncated quotation that "the licit and the illicit under Section 20 [of the Clayton Act] are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means." In petitioner's brief this partial quotation is not cited directly from *Hutcheson*; rather, the citation is to *Allen Bradley's* quotation from it. Petitioner's reluctance to come directly to grips with *Hutcheson* is understandable, for in a footnote to a portion of the very sentence on which petitioner would rely Justice Frankfurter reaffirmed the validity of *Brims*.

The facts of *Hutcheson* must be clearly remembered for full realization of the fact that it in no way relaxed, but reaffirmed the established doctrine that unions and employers may not combine to regulate markets. *Hutcheson* arose out of a typical jurisdictional dispute between two unions as to which had jurisdiction over the erection and dismantling of machinery in a construction project. No joint action with any employer or group of employers was involved. The "interest" of each of the competing unions was pursuit of employment for their members.

Against that background Justice Frankfurter said (312 U. S. at 232) "So long as a union acts in its self-interest and does not combine with non-labor groups, the licit and the illicit \* \* \* etc. and to the first clause just quoted, he appended footnote 3, reading:

"Cf. *United States v. Brims*, 272 U. S. 549, involving a conspiracy of mill work manufacturers, building contractors and union carpenters."

It is quite apparent then that "self-interest" to which *Hutcheson* referred was self-interest limited to a "term or condition of employment" and that the long standing doctrine that labor unions could not combine with non-labor groups to impede or interfere with competition was reaffirmed.

*Allen Bradley Co. v. Local Union No. 3*, 325 U. S. 797 (1945), is of controlling significance in the case at bar because decided after *Hutcheson* and *Apex*. Its facts parallel those at bar (indeed, are not as strong in the employer's favor).

Quite contrary to petitioners' contention, neither it nor any other case holds that aiding and abetting employers' violations of the antitrust laws is always the *sine qua non* of a union's antitrust liability. Cases in which "aiding and abetting an employer conspiracy" was a pivotal issue all

involved union activities at least partially within legitimate labor objectives contemplated by the Clayton and Norris-LaGuardia Acts. That is why the question of "aiding and abetting employer conspiracies" became relevant. Only when a union's activities in any given situation deal at least in part with terms and conditions of employment, representation, or evasion of union standards by employers so that the Clayton-Norris-LaGuardia exemption may *prima facie* apply, is inquiry into the "aiding and abetting of employer group restraints" necessary to determine whether the exemption should be withheld or forfeited.

Thus, the question presented in *Allen Bradley* was whether it is a violation of the Sherman Act "for labor unions and their members, prompted by a desire to get and hold jobs for themselves at good wages and under high working standards, to combine with employers and with manufacturers of [electrical] goods to restrain competition in, and to monopolize the marketing of, such goods" (325 U. S. 798). Parallels between *Allen Bradley* and the instant case are striking and significant. In both cases the union or unions were dealing *en masse* with numerous competing employers. In *Allen Bradley* an objective was to eliminate competition from manufacturers outside of New York; here an objective is to restrain competition in convenience of marketing hours.

Comparing the *Allen Bradley* facts and contentions with those at bar, we find that petitioners here repeatedly assert that the unions were acting in "their members' self interest"; but in *Allen Bradley* the union advanced the same argument and showed that jobs for the Local members were multiplied " \* \* \* wages went up, hours were shortened" by the restraints involved (325 U. S. at 800). The repudiation of the union contention in *Allen Bradley* demonstrates that the mere fact of "self-interest" (even



if "self-interest" be assumed in the case at bar) does not legalize the restraint involved.

Petitioners and the Solicitor General assert again and again that the restriction on market operating hours is solely the result of union aggression. Thus, petitioners' brief argues that "the surrender of the employers to the unions' demand can hardly be equated with the connivance of the employers with the unions. Capitulation is not conspiracy." (p. 96.) But the identical argument was rejected in *Allen Bradley*, where the union argued and the District Court's approved finding found " \* \* \* the union was the actuating party instead of the manufacturers or employers" (41 F. Supp. at 750), and it was "the dynamic force which had driven the employer-group to enter into the agreement" (325 U. S. at 820). The holding in *Allen Bradley* makes it clear that it is immaterial whether a restraint is originated and perpetuated by a union rather than by an employer. Whether the employers "surrender," as in *Allen Bradley*, or joyously embrace the restraint is irrelevant.

Here petitioners talk out of both sides of their mouths—their lawyers say the unions were the aggressors, but Emmett Kelly, Secretary of the dominant Local testified, "We accepted the majority of industry proposal," (R. 139) and that he protested vigorously at placards in plaintiff's stores which placed the "onus" of the restraint on the union (R. 110). He says the restraint or closing at 6:00 P.M. is "Pursuant to an industry-union agreement" (R. 110). Since an agreement on such a subject, is illegal it is not material who was the initiator.

Petitioners present a variation of the same contention in asserting that they "acted alone," implying that this would be of legal significance, by quoting the following language from *Allen Bradley*:

"Our holding means that the same labor union activities may or may not be in violation of the Sherman Act, dependent upon whether the union acts alone or in combination with business groups." (325 U. S. at 810.)

Taking this statement entirely out of context, petitioners argue that it means that so long as a trade restraint is the result solely of union activity, it is legal. But this is not at all the proper meaning of this quotation:

At the time that *Allen Bradley* was decided (1945), it was lawful pursuit of a recognized labor objective of increasing the work of their fellow members for union members to refuse to work on any products not made by their fellow members. (The boycott provisions of the Taft-Hartley Act were then two years in the future.) Thus, when the Court pointed out that the same boycott effect—an exclusion of Allen Bradley products from the New York market—could be achieved solely by union action, it was referring to the fact that by means of its members' refusal to work on "unfair" products, the union could have achieved unilaterally the same result it did achieve by enlisting or coercing employer agreement; and in such event it then would have been protected. Note, however, that price fixing and market control which the Court noted were not "terms and conditions of employment" (325 U. S. 799-800) were forbidden because the union could not enforce prices or control the market even "acting alone." (See decree in *Allen Bradley Co. v. Local Union No. 3*, 164 F.2d 71, 73-74 (2d Cir., 1947).)

In creating or aiding in the market hours restraint here, petitioners stand in precisely the same situation as did the *Allen Bradley* union with respect to the price fixing agreement. The union in neither case could enforce the improper restraint without employer cooperation (voluntary or coerced) and were, and are, wholly dependent upon it. Just

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as the *Allen Bradley* union could not, "acting alone," fix prices, so here the unions "acting alone," cannot lawfully prevent the public from selecting meat from the employers' self-service cases after 6:00 p.m. Both restraints necessarily involve the agreement and participation of employers; and whether that agreement be willing, or coerced, is immaterial because it is a combination in restraint of trade as *Allen Bradley* plainly holds. Moreover, the unions at bar are in an even more difficult position than was that in *Allen Bradley*, for in seeking to have its members work only on union made material, the *Allen Bradley* union was pursuing a recognized union objective. But here, regulation of hours within which entrepreneurs will compete has never been recognized as an exempt union objective.

The fact that an agreement is secured through the process of collective bargaining does not necessarily immunize it from the Sherman Act as counsel assert. This asserted defense was specifically rejected in *Allen Bradley*. Neither that case nor any other, holds that the bargaining room is a sanctuary in which unions and employers safely may enter into agreements to restrain trade. It simply is not true that because an agreement is collectively bargained it necessarily is a lawful (or an unlawful) agreement. *Allen Bradley* stands for the proposition, therefore, that a collectively bargained agreement which goes beyond terms and conditions of employment to impose restraints of trade is not within the labor exemption and the illegal portions thereof may be stricken down.

To this line of unbroken authority must be added *United States v. Employing Plasterers Association*, 347 U. S. 186 (1954), and *United States v. Employing Lathers Association*, 347 U. S. 198 (1954), which show the continuing vitality of *Allen Bradley*.

There remain for consideration the Court's subsequent

decisions in *International Brotherhood of Teamsters v. Oliver*, 358 U. S. 283 (1959), and *Telegraphers v. Chicago & N. W. R. Co.*, 362 U. S. 330 (1960). Although neither of these cases involved the Sherman Act they are relevant. *Oliver* directly involved wages and hours of truck drivers, and an effort by a group of trucking operators to defeat the union wage scale by a species of sub-contracts. The central matter at issue thus was terms and conditions of employment. *Telegraphers* involved a refusal of the railroad to negotiate about the security of employment of telegraphers and that subject was squarely held to be a "term or condition of employment." Both of those decisions, and at this Term, the decision in *Fibreboard*, are consistent with the view that "terms and conditions of employment" means only what it says in both Clayton and Norris-LaGuardia.

We suggest that this Court, variously composed as it has been from the date of *Brims*, 1926, to the present, would not so consistently have held to the theory having its fullest expression in *Allen Bradley* if the theory was not fully in accord with proper interpretation of the Sherman Act. The fact that cases of this general type have arisen steadily over the span of years shows that there is a continuing threat to the well-being of a competitive economy that cannot be ignored. The vast expansion of multilateral collective bargaining in recent years shows that the *Allen Bradley* doctrine poses no threat to what, for want of a shorter term, we call the legitimate objectives of unions or to multilateral bargaining. At the same time the expansion of multilateral bargaining expands the temptation to engage in anti-competitive deals and dictates that the *Allen Bradley* doctrine neither be abandoned nor nibbled away bit by bit.

## II.

**THE LABOR EXEMPTION AS NOW CONSTRUED HAS NOT HAMPERED MULTI-EMPLOYER COLLECTIVE BARGAINING AS TO TERMS AND CONDITIONS OF EMPLOYMENT. ANY FURTHER RELAXATION OF THE SHERMAN ACT WOULD BE TO THE VAST DETRIMENT OF THE PUBLIC.**

It is difficult to understand precisely where the briefs for the American Federation of Labor and Congress of Industrial Organizations and for petitioners would draw the line between union conduct exempt and non-exempt from the Sherman Act. The argument for petitioners goes so far as to state that, "Even within the area of commercial competition, absent union abetment of a business men's conspiracy to violate the antitrust law, union activity conducted by a labor organization in its self-interest is immune from the Sherman Act." And this would be true even if the conduct was " . . . a restraint upon commercial competition" so long as acting "independently of aid to a business men's combination the union exerted its own bargaining power to serve its own end" (pp. 61-62). If we read this amazing contention aright, petitioners are contending that in a situation such as that at bar, or in countless other situations of multi-employer collective bargaining in which multiple employers, strong and weak, but genuinely competitive in their commercial practices, bargain with a massive union, the union, seeking a larger wage increase than the then economic circumstances of the employers permitted, could insist that all of them agree on a price increase sufficient to yield the desired wage level. So long as the union went through the form of collective bargaining it would be immune, and, of course, if it were immune, so also would be the employers.

It is quite evident that this theory would utterly destroy the Sherman Act. Businesses cannot operate without employees, and so large a percentage of employees today are



unionized that the device we have outlined, with the allure-  
ment of increased profits and increased wages, would be  
irresistible. And the same technique could be applied to  
allotments of territories, entries into the field, mergers, or  
countless other things, all yielding economic benefits to the  
participants but destructive of a free, competitive economy.

The consequences just sketched are by no means far-  
fetched. If the findings of the District Court in the *Allen  
Bradley v. Local Union No. 3*, 325 U. S. 797 (1945), at 41 F.  
Supp. 727, be consulted, it will be seen that something not  
much different occurred there. In *United States v. Brims*, 272  
U. S. 549 (1926) the reports do not clearly indicate whether  
the unions or the business men were the initiators of the  
scheme but "as usual under such circumstances, the public  
paid excessive prices" (p. 552). In *United States v. Employ-  
ing Plasterers Ass'n.*, 347 U. S. 186 (1954) and *United States  
v. Employing Lathers Ass'n.*, 347 U. S. 198 (1954), essen-  
tially the same technique was used. In every instance,  
the consumer was the victim. If petitioners' proposal were  
accepted, the country would be headed for an inevitable and  
endless wage-price spiral.

It is nothing less, we respectfully submit, than effrontery  
for petitioners to suggest that any such state of affairs  
would be wise policy, and even greater effrontery to suggest  
that this Court has the right seriously to entertain a pro-  
posal so to legislate the Sherman Act out of effective ex-  
istence. Nor is there any reason to believe that it will.

If we turn from this shocking proposal to a consideration  
of the actual facts of the case at bar and the supposed  
problems of Chicago butchers with respect to their work-  
ing conditions, it is apparent that the unions' power to bar-  
gain for their members *within the confines of antitrust-  
labor policy as it is now understood* is ample to assure the  
individual butchers that their desire to earn a livelihood

under suitable wages and working conditions can be attained fully, and was here attained, without the inclusion of the market restraint.

The simple fact is that although the International Union, of which the Locals at bar are a part, has butchers organized the length and breadth of the land, most of them, including all of them in Illinois except in the Chicago area, have no objection to evening sales of meat, and this obviously, is to the advantage of the butchers themselves for it means that fewer people are driven to use meat substitutes and therefore more work is available for meat cutters.

It is equally obvious that every possible labor objection that might be urged against the evening sale of red meat can be urged against evening sales of poultry. Nevertheless, fresh poultry, wrapped in containers identical to those used for fresh meat and displayed in the same self-service cases, may be sold, together with smoked meats and other meat items, "provided that union members stock the cases before 6:00 p.m." (1957 contract, R. 47).

Collective bargaining as to terms and conditions of employment gives the unions and their members ample opportunity to negotiate for suitable rates of pay and suitable hours of work and times of employment, to protect their work jurisdiction, and to protect their work loads through suitable enforceable contracts (*Textile Workers Union v. Lincoln Mills*, 353 U. S. 448 (1957)). The inability of the unions to demonstrate any difficulty in these fields either before or during the long time this case has been pending demonstrates that the unions have no need for a license to violate the Sherman Act in order to protect wages, hours and working conditions of their members. And whatever may have been the fears of butchers when self-service was an innovation, the statistics

at page 7, *infra*, demonstrate that through increased productivity and lower overhead it has expanded job opportunities.

### III.

**THE PROPOSALS OF THE SOLICITOR GENERAL HAVE NO BASIS IN LAW, WOULD BE UNWORKABLE AND INVITE ABUSE. IN ANY EVENT, WHEN APPLIED TO THE FACTS IN THE INSTANT CASE THEY REQUIRE AFFIRMANCE OF THE COURT OF APPEALS DECISION.**

In stating his concepts concerning the scope of labor's exemption from the antitrust laws, the Solicitor General quite properly rejects the unions' radical theory that agreements in restraint of trade between unions and others are automatically exempt from the antitrust laws whenever the unions deem such restraints to be in their members' best interest.

Recognizing the threat to the national antitrust policy which would stem from adoption of the unions' contention, the Solicitor General notes that there are certain classes of restraints which, although they might confer a benefit upon labor union members, are nevertheless subject to the antitrust laws.

Where we differ with the Solicitor General is in his proposed definition of the scope of the labor exemption, and in his misapprehension of the facts in the instant case.

In his brief (S. G. pp. 27-55), the Solicitor General creates various categories of collective agreement provisions and declares which of the categories he considers within the labor exemption.

The manner in which the "categories" are organized in the brief, with argumentative discussion and various qualifications to certain of the categories interpolated, causes considerable difficulty in understanding whether he considers

certain agreements subject to the antitrust laws because they fall into a non-exempt category or whether the exemption is inapplicable because the agreement is within a qualification to one of the categories he would create." We may be pardoned the observation that the learned servant has undertaken the impossible task of postulating all conceivable economic interactions in an exceedingly complex system and fitting them into three families, subject to drop-outs, within a few pages of a brief, all without benefit of economic evidence. The effort, if to be made at all, should be made before the Congress, not here. However, despite the imprecise delineation of the categories and qualifications of presumed exempt and non-exempt agreements, we believe the following comments show the unwisdom, from a judicial viewpoint, of his approach:

1. *The First Category.* It appears to be the Solicitor General's opinion that agreements which fix wages, hours and other conditions of employment directly, and restrain commercial competition only indirectly or incidentally, are exempt from the anti-trust laws unless either (a) the unions operate their own businesses and use their leverage to injure the business of their competitors, or (b) the unions and employers are engaged in an independent conspiracy to restrain competition in the employers' line of business and were utilizing a collective agreement as a means to implement that conspiracy. Whatever the merit of his viewpoint,

11. At pages 25, 26 and again at page 52 of his Brief, the Solicitor General lists three proposed "classifications" of collective bargaining agreements, but argues (pp. 27 and 37) as to only two "categories." The third of the classifications is similar to an exception to the second of such categories, described at page 45 of his Brief, except for the fact that in the third classification the Solicitor refers to restraints which benefit employees by enabling employers to increase "the earning power of the business" and in the third qualification to the second category he refers to restraints which would yield benefits to employees through "increased market power" of their employers. We are unable to perceive what distinction the Solicitor is seeking to establish.

this category of activity, obviously, is not relevant in the instant case. The selling hours restriction herein is not a direct regulation of wages, hours or terms of employment, for all of those subjects were dealt with elsewhere in the agreement.

2. *The Second Category.* The Solicitor General urges that agreements which regulate hours, work schedules and assignments but which also operate as "direct restrictions upon competition in the product market" should nevertheless be held exempt except where "it appears that the stipulation [restraining competition] is essentially a device for manipulating the product market in the employers' interest." (S. G. pp. 37, 41.) The Second Category is plainly an effort to erode *Allen Bradley*.

Few agreements are made save for a mutuality of interest. There must be an objective standard for determining when a direct restraint on competition, which confers benefits upon both parties is exempt from the antitrust laws if it is to be exempt at all. No test can properly be one of "specific intent" for two reasons, i.e., because specific intent is generally difficult to prove, and, more important, because it is likely that in a substantial number of situations unions will be motivated by dual intents. Surely, to the extent unions intend to restrain, not competition between workers but between entrepreneurs as well, they intend the consequences of their acts and are deliberately manipulating the commercial market place. If that is not to be law there are numerous activities of business groups, heretofore thought vulnerable to the Sherman Act, that would become immune.

The Solicitor General further suggests that to bring a case within his third qualification "there should be independent proof, beyond any inference that might be drawn from the agreement itself, showing that the contract is essentially a



device for manipulating the market." (S. G. p. 46.) Where a restraint of trade is effected by a collective agreement that is *unnecessary* to attainment of benefits sought by labor, it can competently be found that the contract was, *as here*, at least in part a device for manipulating the market. To require "independent proof" is to make the third qualification a restatement of the second qualification to the posited second category, for it would require proof of an independent conspiracy in restraint of trade. We submit that an "unnecessarily broad restraint" is equivalent to an "independent restraint" in economic and legal effect.

Nevertheless, if the Solicitor General would require evidence apart from the agreement itself, this is one of the fortunate cases in which the complainant was able to obtain such in the words of the union officials themselves. They acknowledged that the unions were attempting to favor and protect small retailers in competition with larger ones and so to regulate the retail meat industry that a butcher might progress with the maximum facility from an employee to an employer.

The Solicitor General concedes that where unions bring employers together in a price-fixing agreement in the expectation that increased profits will yield a treasury which can be tapped for higher wages, the unions are beyond their exemption. By this concession, we submit that the Solicitor General has made inevitable his ultimate acceptance of the Court of Appeals' position, *i.e.*, that labor is beyond the scope of its exemption when it restrains trade beyond what is essential to fix terms and conditions of employment. In adverting to price-fixing the Solicitor General has simply stated *one example*, among many, of restraints which, although yielding a benefit to labor, involve also a gratuitous and unnecessary restriction upon competition. There is no logical reason why it is any more an illegal restraint for unions to create price-fixing agreements for the purpose of in-

creasing their wages than for unions; as here, to create contracts whereby employers agree to refrain from competition among themselves in the hope that union working hours will be affected. Logic dictates the contrary, for in the instant case, the unions were already quite satisfied with the working hours they had negotiated; so that there was *no labor objective* remaining to be attained by the selling hours restriction; that restriction was nothing but a gratuitous, naked restraint of trade. In the price-fixing situation posed hypothetically by the Solicitor General, it could at least be said by the unions that they were not yet satisfied with their wages and there did remain a wage objective to be attained.

It is an inevitable conclusion that if antitrust and labor policies are to be reconciled without stultifying or subverting either, labor's exemption should be declared limited to instances in which (a) unions bargain, or engage in collective activity bearing directly, upon terms and conditions of employment or (b) where a direct restraint of trade is necessary for protection of the aforesaid objectives (*Oliver*), and such restraint goes no further than that.

That standard is, should be, and consistently has been the law. Under this test, labor's exemption from the antitrust laws would apply to protect unions to the full extent intended in the Norris-LaGuardia and Clayton Acts. So long as they bargained concerning terms and conditions of employment, the fact that their collective activity or agreement operated additionally as a restraint of trade would not subject unions to prosecution under the antitrust laws.

Applying this test to the instant case, the Court of Appeals found, and that finding is undisturbed herein, that the market hours restriction constituted an unreasonable restraint upon competition.<sup>11</sup> Since that restraint was not necessary in the interest of regulating working hours,

a subject which was fully handled elsewhere in the agreement, that restraint should not be exempt from the anti-trust laws.<sup>12</sup>

The complex realignment of the law the Solicitor General suggests, with its subjective tests and impossible inquiries into, and supposed determinations or balancing, of motivations, would be impossible of administration. How a trial judge could convert the Solicitor's suggested theories into workable jury instructions we fail to see.

#### IV.

#### **THE NATIONAL LABOR RELATIONS BOARD HAS NO PRIMARY JURISDICTION OVER THE CONTROVERSY.**

There is nothing of substance we can add to the definitive and comprehensive presentation of the Solicitor General on this subject. In view of the fact that the General Counsel of the National Labor Relations Board has joined the Solicitor General in the brief and disclaimed the jurisdiction which petitioners would confer upon his agency, we submit the subject should be closed.

11. Observe that the Court denied certiorari on proposed question 3.

12. The unions and Solicitor General urged that the operating hours restriction also had some relationship to job security. These contentions are patently unsupported by the facts. Jewel offered to operate self-service counters during the evening with no employees on duty. If to do so might result occasionally in disarranged packages and untidy refrigerated cases during the evening, Jewel was willing to accept the consequences. While Jewel was willing to employ butchers in the evening to attend refrigerated self-service cases, it was also willing to operate without butchers on duty if the butchers desired not to work.

Analysis of the economics of the situation shows that far from threatening jurisdiction of butchers or their job security, the removal of the restriction upon night operating hours would have the effect of increasing the number of butchers who might find employment and their jobs could be done during daytime hours to prepare packages for evening self-service selling. We can see no way in which jobs would be lost to butchers if the restriction were removed.

## CONCLUSION

Although, in the nearly 75 years it has been on the books, the Sherman Act has been the cornerstone in the flowering of an economy that has brought the greatest good to the greatest number of people in all history, labor's attack upon it continues unabated without recognition that the conditions which underlay *Loewe v. Lawlor*, 208 U. S. 274, have long since ceased to exist, and without recognition that the conditions leading to *Norris-LaGuardia* have long since ceased to exist. We now have federal statutes establishing fair minimum wage and hour standards, implemented further by the Walsh-Healey standards for work under government contracts. We have a National Labor Relations Board to enforce workers' rights to organize and to bargain. In short, whatever may have been thought to be the legal or economic disadvantages that entitled workers in 1908 to complain that the Sherman Act stood in the way of their self-betterment, those disadvantages not only no longer exist but have been replaced by special advantages.

Yet petitioners, and to a substantial degree the Solicitor General, say the Sherman Act should be further relaxed as to labor organizations and that this should be done to promote collective bargaining. Collective bargaining is not an end in and of itself but is merely the tool or means for reaching an end—the attainment of fair conditions of employment.

The arrogant pretensions of the organizers of a small segment of workers who say they should be allowed, through the device of collective bargaining, to restrain trade in the market place because the restraint may re-enforce wage and hour benefits already attained or produce others, is shocking to the conscience.

This record demonstrates that the power to restrain trade cannot be trusted in the hands of any organized eco-

economic group or groups. The dominant officer of the petitioning unions testified that even if 85% of the housewives in the Chicago area could not purchase fresh meat save at great inconvenience during the hours of 9:00 A.M. to 6:00 P.M., he still would not know whether there was any necessity for evening operations (R. 133-134). This Court heretofore has recognized that raw and unconfined economic power in the hands of any specialized group inevitably tends to be used callously for the selfish interests of those who possess it, and to the detriment of the general public. Petitioners exhibit that callousness. And the unrealistic, subjective tests suggested by the Solicitor General could not possibly control it.

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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January 8, 1965.



## APPENDIX A.

SUPERMARKET NEWS, MONDAY, JULY 27, 1964

# Chicago Butchers Will Not Work Nights Whatever Top Court Rules

CHICAGO. — Union butchers will still refuse to work after 6 p.m. in Chicago stores even if the U. S. Supreme Court affirms a lower-court invalidation of a collective-bargaining-agreement ban on the sale of fresh meat here after that hour.

This was told to Supermarket News last week by Emmett Kelly, vice-president of the Amalgamated Meat Cutters and

Butcher Workmen of North America, AFL-CIO, and director of its Chicago Division.

The curfew was ruled illegal in U. S. Court of Appeals here in May by Jewel Tea Co., and the union, joined by the AFL-CIO, is bringing the matter before the Supreme Court, which reconvenes in October.

Jewel Tea's attorney, George Christensen, told Supermarket News last week that, if the high court denies the union's appeal, Jewel will begin selling meat after

6 p.m., which it hasn't done since 1947.

He added, "My understanding is that, after the Circuit Court of Appeals decision, quite a few small independents, particularly in the southern part of the (Cook) county, began to sell meat after hours."

This was true, said Mr. Kelly, but not too many and not for long. Those that did were contacted by union business agents, and after-hours sales were quickly abandoned. There are areas in the southern part of the county, he

added, that are permitted to operate after 6 p.m. by union contract.

Mr. Kelly said, "We'll abide by the decision of the court," should the plea be denied. "All employers will then have the right to sell meat any time they please."

He added, however, it would be sold after 6 p.m. "without the benefit of any butchers being on duty. Butchers won't work without the sanction of the union."

"We have a bargaining issue—the right to sit down and bargain whether or not we will work at all and under what conditions."

"And if they attempt to sell without the benefit of union help, then no one else could handle the meat, including the clerks, as this would be a violation of our contract."

If the decision went against the union, he explained, the meat department could be open to the public seven days a week, around-the-clock. But he said no one could straighten out, restack, do anything in cutting and servicing of meat after 6 p.m. Departments would be a shambles, he predicted.

Locals involved are 189, 262, 320, 546, 547, 571 and 638. The AFL-CIO, said Mr. Kelly, is entering the case as a friend of the court for the second such time in its history.

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IN THE  
**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1964

Local Union No. 189, Etc., **AMALGAMATED MEAT CUTTERS  
AND BUTCHER WORKMEN OF NORTH AMERICA,**  
**AFL-CIO, et al.,**

*Petitioners,*

*vs.*

**JEWEL TEA COMPANY, INC.,**

*Respondent.*

On Writ of Certiorari to the United States Court of Appeals,  
for the Seventh Circuit

**MOTION FOR LEAVE TO FILE A BRIEF AS AMICI  
CURIAE AND BRIEF FOR NATIONAL LIVESTOCK  
FEEDERS ASSOCIATION, NATIONAL LIVESTOCK  
PRODUCERS ASSOCIATION, RIVER MARKETS  
GROUP, AMERICAN STOCKYARDS ASSOCIATION  
AND CERTIFIED LIVESTOCK MARKETS ASSOCIA-  
TION AS AMICI CURIAE**

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Livestock Producers Association,  
River Markets Group, American  
Stockyards Association, and Cer-  
tified Livestock Markets Associa-  
tion.*

*Of Counsel:*

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IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 240

Local Union No. 189, Etc., AMALGAMATED MEAT CUTTERS  
AND BUTCHER WORKMEN OF NORTH AMERICA,  
AFL-CIO, et al.,

*Petitioners,*

*vs.*

JEWEL TEA COMPANY, INC.,

*Respondent.*

**MOTION BY NATIONAL LIVESTOCK FEEDERS AS-  
SOCIATION, NATIONAL LIVESTOCK PRODUCERS  
ASSOCIATION, RIVER MARKETS GROUP, AMERICAN  
STOCKYARDS ASSOCIATION, AND CERTIFIED LIVE-  
STOCK MARKETS ASSOCIATION TO FILE BRIEF AS  
AMICI CURIAE**

The National Livestock Feeders Association, the National Livestock Producers Association, the River Markets Group, the American Stockyards Association, and the Certified Livestock Markets Association hereby respectfully move for leave to file a brief *amici curiae* in this case in support of the respondent. The consent of the attorneys for the respondent has been obtained. The consent of the attorneys for the petitioners was requested but refused.

The National Livestock Feeders Association is a voluntary non-profit trade association representing livestock

farmers and feeders located in the major livestock areas of the country who feed and finish livestock for sale as fresh meat. Since the major portion of the meat from the livestock its members produce is sold in fresh form, the National Livestock Feeders Association has a special interest in the marketing restriction in issue in this case.

The National Livestock Producers Association is an association of farmer owned livestock marketing co-operatives operating in over one hundred and thirty-five livestock markets. These livestock marketing co-operatives represent over 400,000 farmer and rancher livestock producers. Each co-operative is owned by the farmers and ranchers who patronize it.

The River Markets Group, a non-incorporated trade organization, comprises in membership the livestock exchanges of six of the largest terminal markets in the United States, namely, St. Louis, Omaha, Sioux City, Sioux Falls, St. Joseph and Kansas City. It represents in excess of nine hundred livestock selling agents operating on these major public markets and selling over twenty-three million head of livestock in 1964.

The American Stockyards Association is a service organization to the livestock and meat industry. Its members are operators of major public markets and thus are an integral part of the livestock and meat industry and their welfare is dependent upon the free movement of meat in the product market.

The Certified Livestock Markets Association is a business trade association of in excess of eight hundred livestock market businesses operating in over forty states. These livestock market businesses sell consigned livestock for customers and perform market services as public stockyards and market agencies as defined under the Packer and Stockyards Act (42 Stat. 159, 7 U.S.C. 181 et seq.).

Each of the movants is adversely affected by the market operating hours restraint in issue. The restriction prevents

fresh meat from being offered for sale in the Chicago area during twenty-five per cent of the hours when processed meats and other substitute products for fresh meat are being offered for sale. This is a severe handicap upon the members of the movants in the marketing of their products because it tends to reduce the potential amount of sales for fresh meat in one of the largest consuming centers for meat in the nation and to induce purchases of other products in lieu of fresh meat.

The Solicitor General's brief (pp. 49-50) seems to depart from the views expressed in prior opinions of this Court by urging that the interests of consumers and other interested third parties should not be weighed by the judiciary in cases of this nature. The movants disagree with the position taken by the Solicitor General. The interests of interested third parties such as the movants must be considered in order to prevent employers and employees from imposing unnecessary restraints upon the market for fresh meat and thus upon the livestock market.

For the foregoing reasons, the National Livestock Feeders Association, the National Livestock Producers Association, the River Markets Group, the American Stockyards Association, and the Certified Livestock Markets Association respectfully request permission to file the accompanying brief *amici curiae* limited to the issue of the scope of the labor exemption.

Respectfully submitted,

ALLEN WHITFIELD

Attorney for National Livestock Feeders Association, National Livestock Producers Association, River Markets Group, American Stockyards Association, and Certified Livestock Markets Association

616 Insurance Exchange Building  
Des Moines, Iowa



IN THE

**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1964

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No. 240

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Local Union No. 189, Etc., AMALGAMATED MEAT CUTTERS  
AND BUTCHER WORKMEN OF NORTH AMERICA,  
AFL-CIO, *et al.*,

*Petitioners,**vs.*

JEWEL TEA COMPANY, INC.,

*Respondent.*

---

**BRIEF FOR NATIONAL LIVESTOCK FEEDERS AS-  
SOCIATION, NATIONAL LIVESTOCK PRODUCERS  
ASSOCIATION, RIVER MARKETS GROUP, AMERICAN  
STOCKYARDS ASSOCIATION, AND CERTIFIED LIVE-  
STOCK MARKETS ASSOCIATION AS AMICI CURIAE**

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**Interest of National Livestock Feeders Association, Na-  
tional Livestock Producers Association, River Markets  
Group, American Stockyards Association, and Certified  
Livestock Markets Association and Statement of Facts**

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The National Livestock Feeders Association is a volun-  
tary non-profit trade association representing cattle, sheep,  
and hog livestock farmers and feeders who feed and finish  
livestock for the slaughter market. Typically its members  
are individual entrepreneurs who purchase livestock in the

feedlot replacement market; feed the livestock themselves, and sell the finished livestock to meat packers and others; and typically, also, the livestock which they produce is slaughtered for sale to consumers, the major portion of which is sold as fresh meat. Accordingly, the members of National Livestock Feeders Association are particularly affected by the restriction in issue since one of its most immediate effects is to favor non-meat substitutes and processed meat products over fresh meat in sales in the Chicago area. Chicago, as the Court may judicially notice, is one of the largest single consuming markets in the nation for meat and other food products.

The National Livestock Producers Association is an association of farmer owned livestock marketing co-operatives operating in over one hundred and thirty-five livestock markets. These livestock marketing co-operatives represent over 400,000 farmer and rancher livestock producers. Each co-operative is owned by the farmers and ranchers who patronize it.

The River Markets Group, a non-incorporated trade organization, comprises in membership the livestock exchanges of six of the largest terminal markets in the United States, namely, St. Louis, Omaha, Sioux City, Sioux Falls, St. Joseph and Kansas City. It represents in excess of nine hundred livestock selling agents operating on these major public markets and selling over twenty-three million head of livestock in 1964.

The American Stockyards Association is a service organization to the livestock and meat industry. Its members are operators of major public markets and thus are an integral part of the livestock and meat industry and their welfare is dependent upon the free movement of meat in the product market.

The Certified Livestock Markets Association is a business trade association of more than eight hundred livestock market businesses operating in over forty states. These livestock market businesses sell consigned livestock for customers and perform market services as public stockyards and market agencies as defined under the Packer and Stockyards Act (42 Stat. 159, 7 U.S.C. 181 et seq.).

Each of the *amici* is adversely affected by the market operating hours restraint in issue. The restriction prevents fresh meat from being offered for sale in the Chicago area during twenty-five per cent of the hours when processed meats and other substitute products for fresh meat are being offered for sale. This is a severe handicap upon the members of the *amici* in the marketing of their products because it tends to reduce the potential amount of sales for fresh meat in one of the largest consuming centers for meat in the nation and to induce purchases of other products in lieu of fresh meat.

This action seeking injunctive relief, a declaratory judgment and damages was brought by respondent Jewel Tea Co., Inc. ("Jewel"), in 1958 against petitioners, seven local unions of the Amalgamated Meat Cutters and Butchers Workmen of North America, AFL-CIO ("Meat Cutters"), Associated Food Retailers of Greater Chicago ("Associated") and Charles H. Bromann, Associated's secretary and treasurer.

Jewel alleged that the Meat Cutters, Associated and Bromann had combined and conspired to impose an unreasonable restraint of trade in violation of Section 1 of the Sherman Act upon all market operators in the Chicago Area. The means used to effectuate this unreasonable restraint of trade was a term in a collective bargaining contract which limited the operating hours of meat markets

from "9:00 A.M. to 6:00 P.M. Monday through Saturday, inclusive" (R. 51). Insofar as the interests of the members of these *amici* are concerned, it is important to note that the sale of all fresh meat was not prohibited after 6:00 P.M. Another clause in the market operating hours article provided that sliced bacon, delicatessen meats, frozen fresh poultry, fresh poultry, frozen packaged fish, smoked butts and frozen specialty meat items could be sold after market hours "in those stores in which the grocery departments remain open after 6:00 P.M." (R. 51-52).

These two provisions were found to have adverse and substantial effects upon competition in that they encourage the purchase of poultry and processed meat and various non-meat substitute food products such as eggs, canned meats, TV dinners and the like and discourage the sale of fresh meat by preventing retailers from offering it for sale at all hours when such other meat and food products are being offered for sale. Because of the effects of the market operating hours limitation on competition and because it lacked any redeeming feature, the Court of Appeals found the clause to be an unreasonable restraint of trade (R. 695). This Court denied certiorari on the issue of the reasonableness of the restraint.

The District Court, after trial without a jury, dismissed the complaint (R. 661-678), and the Court of Appeals reversed (R. 691-698).

## ARGUMENT

Twenty years ago in a dispute similar to the one in issue, this Court noted:

"... we have two declared congressional policies which it is our responsibility to try to reconcile. The one seeks to preserve a competitive business economy; the other to preserve the rights of labor to organize to better its conditions through the agency of collective bargaining. We must determine here how far Congress intended activities under one of these policies to neutralize the results envisioned by the others." *Allen Bradley Co. v. Local No. 3*, 325 U.S. 797, at 806 (1945).

This case is similar to *Allen Bradley* in that this Court is asked once again to determine whether the parties to a direct and unreasonable restraint are immunized from anti-trust prosecution due to the labor exemption. The task is the same—to weigh the policies underlying both sets of laws and reconcile their policies in a way which will best serve the interest of the nation as a whole.

These *amici* believe that the facts in this case clearly prove that the market operating hours restriction provides, at most, only peripheral benefits to the unions which are readily obtainable by other means not involving damage to farmers, the public and others, who are entitled to the benefit of free competition in the marketing of food products and that this Court should, therefore, hold the restriction to be unreasonable and outside the labor exemption. Although the restriction produces only peripheral benefits for union members, it is of great importance to the members of these *amici* because of their dependence upon a free market for their products and a market in which their products are treated equally with other meat and food products competing for the consumer food dollar.

It is clear that the hours when an individual works are within the ambit of the labor exemption; but this goal is



achieved by the working hours provision in the contract in issue (R. 49), and there is no necessity to go beyond that to also regulate the hours when fresh meat may be sold. The petitioners argue that it is necessary for them to limit the hours when fresh red meat may be sold in order to protect their hours of work. However, their argument is based on the proposition that "the subject of market operating hours intimately embraces every aspect of wages, hours and working conditions" (Pet. br., p. 58). In order to substantiate this proposition they argue that the restriction is needed to prevent butchers from working at night, that it is not possible to operate a self-service meat market without butchers on duty and that even if it were possible, Jewel would violate the collective bargaining contract by allowing non-butchers to perform some of the duties normally performed by butchers (Pet. br., pp. 63-73).

The reasons advanced by the unions are not sufficient to bring them within the scope of the labor exemption. If the butchers do not wish to work at night, Chicago area food retailers cannot force them to work. Employers can, however, endeavor to persuade the union members to work nights by offering them premium pay for night work or by making some other offer to induce the butchers to work nights. The feasibility of self-service operation without butchers on duty is a problem for management. If it is impossible for food retailers to sell meat without butchers on duty because they will not be able to adequately service their consumers, management is undoubtedly intelligent enough to make this decision on its own. Finally, it should not be assumed that reputable employers will knowingly violate the terms of the collective bargaining contract by allowing non-butchers to perform butchers' work. Moreover, these reasons should not be held to be sufficient to allow employers and employees to enter into agreements

which substantially restrict the free movement of a specific commodity thereby causing injury to its producers, sales agents, processors, and intermediate distributors, and gross inconvenience to consumers. This is particularly true in this case where alternative means are available which protect petitioners' interests without bringing great harm to other interested parties by prohibiting the sale of fresh meat.

This case is not like *Teamsters Union v. Oliver*, 358 U.S. 283 (1959), *Milk Wagon Drivers v. Lake Valley Farm Products*, 311 U.S. 91 (1940), and *Fibreboard Paper Products Corp. v. NLRB*, 33 Law Week 4089, where ostensible restrictions upon competition were permitted in order to prevent employers from evading their commitments to observe union working conditions. In each of those cases the clause in controversy was needed to protect a real threat to a union's wages or existence. An analysis of those cases shows that if the employers had been permitted to engage in the conduct they desired, the union members would have been immediately injured in that their jobs would have been eliminated or union working standards adversely affected by utilizing non-union independent contractors. These dangers are not present in the circumstances of this case. There is no evidence that, if this clause is held to be illegal, Chicago meat retailers will hire non-union persons to perform butchers' work after 6:00 P.M. and it cannot be assumed that they will knowingly violate the requirements of the collective bargaining agreement in issue by permitting other employees to perform tasks normally performed by butchers during hours when butchers are not on duty. Therefore, the clause does not confer any material or direct benefit upon the petitioners sufficient to offset its gross detriment to Chicago area consumers, to producers of fresh meat and meat products and to others connected with the merchandising of fresh meat and meat products.

The Solicitor General places the limitation in controversy into a category of restraints which regulates "hours, work schedules, work assignments and other matters of direct concern to employees" and "also operate[s] as direct restrictions upon entry or competitive practices in a product market" (U.S. br., p. 37). Such restraints, he says, should be within the labor exemption. He argues that even though collective bargaining contracts encompass a multitude of subjects other than the traditional ones of wages, hours and working conditions, these contracts are within the labor exemption when they are the result of *bona fide* collective bargaining and are directly necessary to protect or promote some labor interest (U.S. br., pp. 37, 39). He contends the labor interest served by the market operating hours clause is that butchers do not wish to work nights and do not want to yield their work to other crafts (U.S. br., p. 48). In order to substantiate his contention, he reasons that if meat were sold after 6:00 P.M. without butchers on duty "there would be substantial *likelihood* that non-butchers would do butcher's work," "meat counters *might* have to be arranged or replenished," a "good customer *might* ask for special service" and Jewel would be *tempted* "to permit non-butchers to do these jobs" (emphasis supplied) (U.S. br., pp. 48-49). On the basis of these *speculations* he finds, without attempting to determine whether other means of achieving this alleged labor objective less restrictive in their effect upon competition are available, that the restraint is exempt from the antitrust laws due to the fact that it promotes a direct union benefit. He concludes his argument by telling consumers and interested injured third parties such as these *amici* that they should place their trust in the collective bargaining process and if their interests are prejudiced by collective bargaining they should look to Congress for relief.

The reasons set forth by the Solicitor General are the same as those relied upon by the petitioners. As previously noted, these reasons are insufficient to bring the petitioners within the purview of the labor exemption. If the labor exemption is to have any vitality, the requisite union benefit needed to exempt a restriction effectuated by collective bargaining from the antitrust laws must be based on more than mere speculation.

The facts in this case show that employers and employees are imposing serious restraints upon a competitive market. If employers and employees are going to be permitted to make such restraints effective by use of the collective bargaining process, the public interest requires that they should be permitted to do so only when other means of securing labor objectives have been exhausted and there is a remaining need for further action which can only be met by restraining trade.

### Conclusion.

For the foregoing reasons, the decision of the Court of Appeals should be affirmed.

Respectfully submitted,

ALLEN WHITFIELD

Attorney for National Livestock Feeders Association, National Livestock Producers Association, River Markets Group, American Stockyards Association, and Certified Livestock Markets Association

January 9, 1965

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NOTION FILED

SUPREME COURT, U. S.

MAY 3 1965

**Supreme Court of the United States**

October Term, 1964

**No. 230**

Donald Trump, Nos. 127, 128, 129, 130, 131, 132, 133, 134 and 135 and  
General Farm Bureau and American Farm Bureau of North  
America, INC., et al.,

*Plaintiffs,*

*vs.*

Seal Top Company, Inc.,

*Respondent.*

**NOTICE FOR LEAVE TO FILE AN AMICUS CURIAE  
AND MOTION FOR AMERICAN FARM BUREAU  
FEDERATION AS AMICUS CURIAE**

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IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

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No. 240

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Local Unions Nos. 189, 262, 320, 546, 547, 571 and 638 Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, et. al.,

*Petitioners,*

vs.

Jewel Tea Company, Inc.,

*Respondent.*

---

MOTION BY AMERICAN FARM BUREAU  
FEDERATION FOR LEAVE TO FILE  
BRIEF AS AMICUS CURIAE.

---

The American Farm Bureau Federation hereby respectfully moves for leave to file a brief *amicus curiae* in this case. The consent of the attorney for the respondent has been obtained. The consent of the attorneys for the petitioners was requested but refused.

The American Farm Bureau Federation, 1000 Merchandise Mart, Chicago, Illinois 60654, is a general farm organization incorporated under the "General Not For Profit

Corporation Act" of the State of Illinois. Farm Bureau was organized in 1919 for the purpose of promoting, protecting and representing the business, economic, social and educational interests of farmers and ranchers of the United States. It has member State Farm Bureaus in all of the states of the United States (except Alaska) and in Puerto Rico, representing more than 1,600,000 Farm Bureau member families. The largest percentage of the Farm Bureau membership is comprised of livestock producers and feeders.

The interest of the American Farm Bureau Federation in this case arises from the fact that a substantial portion of the livestock producers' market for fresh meat is lost due to marketing limitations imposed by labor unions and acquiesced in by food stores in the Chicago area. Under the limitations in question relative to the sale of fresh meat "no customer shall be served who comes into the market before or after the hours" of 9:00 a.m. to 6:00 p.m. A customer entering the store after 6:00 p.m., or before 9:00 a.m., will find all kinds of red meat available for selection and purchase from self-service counters. This meat was prepared and packaged by union members during regular working hours. However, the consumer is restrained from buying and the food store is prohibited from selling fresh meat. Thus, livestock producers are foreclosed from their ultimate market as the result of agreements and contracts between the petitioner unions and others.

The American Farm Bureau Federation has filed relatively few *amicus curiae* briefs with this Court, recognizing that such briefs should be held to a minimum. This organization did not plan to file a brief in this case until

recently. The decision of the Court of Appeals seemed so clear and reasonable that it appeared obvious that the parties to this case could adequately present the issues and arguments to this Court in such a manner that it would not be necessary for non-litigants to become involved and thereby take additional time of this Court in considering this case. However, the recent intervention by the Solicitor General in support of the unions' position necessitated an expression by this organization on behalf of its membership. We regret that the Federal government has not taken a position favoring the removal of such unreasonable restraints on the sale of fresh meat. It is our firm belief that the activities of the defendants in this case are contrary to the best interests of all Americans, including farmers and ranchers, and are a violation of the antitrust laws.

The above entitled cause not only poses the question whether the limitation upon market operating hours and the controversy concerning it are within the labor exemption of the Sherman Antitrust Act, but also the question whether producers of fresh meat will be foreclosed of their market while their direct competitors, their foreign counterparts, and their indirect competitors, producers of substitute products, have access to consumers.

Petitioners herein have jurisdiction over not only fresh red meat but fresh poultry, packaged and canned meats, and frozen meat, poultry, fish and seafood. All of these items are displayed in cases, and the displays are stocked, arranged and rearranged by butchers. The question thus presented is whether the unions, by collective bargaining agreements, can restrain trade in certain of the products of America's farmers by limiting the hours during which

such products may be sold, while at the same time allowing sale of others.

Since the issues and ramifications in this case are much broader in scope than the briefs of the parties hereto would indicate, the American Farm Bureau Federation respectfully requests that it be permitted to file an *amicus curiae* brief in this case so that the views of the farmers and ranchers of the United States in this controversy may be more adequately presented.

Respectfully submitted,

/s/ Allen A. Lauterbach,  
General Counsel,  
American Farm Bureau Federation,  
1000 Merchandise Mart,  
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**NOTICE OF MOTION.**

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**Attorneys for Respondent.**

*Please take notice that on the Eighth day of January, 1965, the undersigned will file the above motion and accompanying Brief in the office of the Clerk of the Supreme Court of the United States, said motion to be considered at the convenience of the Court.*

*/s/ Allen A. Lauterbach,*

*Attorney for*

*American Farm Bureau Federation,*

*1000 Merchandise Mart,*

*Chicago, Illinois 60654.*



AFFIDAVIT OF SERVICE.

L. Gene Lemon, being duly sworn, deposes and says that in compliance with paragraph 33 (1) of this Court's Rules, he deposited a copy of the above Motion and Notice of Motion in the United States Post Office in the City of Chicago, properly addressed to the attorneys for the parties, with firstclass postage fully prepaid on the *Eighth* day of *January*, 1965.

/s/ L. Gene Lemon,  
Of Counsel.

Subscribed and sworn to before me this *Eighth* day of  
*January*, 1965.

/s/ Myrtle Robinson,  
Notary Public. (Seal)

My commission expires on  
October 5, 1966.

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*Petitioners,*

**vs.**

**Jewel Tea Company, Inc.,**

*Respondent.*

---

**BRIEF FOR AMERICAN FARM BUREAU  
FEDERATION AS AMICUS CURIAE.**

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**STATEMENT OF FACTS AND INTEREST**

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The American Farm Bureau Federation (hereinafter called "Farm Bureau"), 1000 Merchandise Mart, Chicago, Illinois 60654, is a general farm organization, incorporated under the "General Not For Profit Corporation Act" of the State of Illinois. Farm Bureau was organized in 1919 for the purpose of promoting, protecting and representing the business, economic, social and educational interests of farmers and ranchers of the United States. It has member State Farm Bureaus in all of the states of the



United States (except Alaska) and in Puerto Rico, representing more than 1,600,000 Farm Bureau member families.

The interest of Farm Bureau members in this case derives from the fact that livestock production is by far the most important source of agricultural income in the United States, and more than one million Farm Bureau member families are engaged in livestock production. Generally, farmers do not meet or deal with those for whom they produce but rather depend upon retailers, butchers and others to represent their products favorably to consumers.

Farm Bureau members are concerned about the loss of a substantial portion of the livestock producers' market for fresh meat due to marketing limitations imposed by labor unions and acquiesced in by food stores in the Chicago area. Historically and presently, the Chicago live and dressed meat market has been the one to which everyone concerned with the movement of such products looks for market facts. Not only is it a vast interstate market in its own right, it is a key influence on the other markets of the nation.

Under the limitation in question relative to the sale of fresh meat "no customer shall be served who comes into the market before or after the hours" of 9:00 a.m. to 6:00 p.m. A customer entering the store after 6:00 p.m. or before 9:00 a.m. will find all kinds of red meat available for selection and purchase from self-service counters. This meat was prepared and packaged by union members during regular working hours. However, the consumer is restrained from buying and the food store is prohibited from selling fresh meat during these restricted hours. Thus, livestock producers are foreclosed from their ulti-

mate market as the result of agreements and contracts between the petitioner unions and others.

The food industry is a highly competitive one in which many products vie for consumer preference. Fresh beef, pork, lamb and veal compete for a place on the dinner table with poultry and ham; with processed and frozen meats of endless variety, with frozen fish and seafood, with meat substitutes such as beans, rice and the noodle family of food. Some of the competitive products are imported canned and frozen meats; others include imported raw materials for use in sausage, weiners, cold cuts, etc. (*Foreign Agriculture Circular*, U.S.D.A., October, 1964, Table 2.)

The activities of the petitioner unions have resulted in an unreasonable burden of the free and uninterrupted flow of fresh meat products to the consumer. The meat has been prepared, packaged and placed in refrigerator counters, during regular working hours, by members of the butchers' unions. No further labor, union or otherwise, is necessary to complete the marketing cycle from farmer to consumer. However, there is an obstacle that has been placed between the meat counter and the consumer—a restraint that says, "Do Not Touch This Meat." Yet, those responsible for this limitation do not place similar restraints on frozen beef from Argentina or canned ham from Poland.

By the terms of the collective bargaining agreement, here in controversy, negotiated between butchers' unions and food stores in Chicago, fresh beef, pork, lamb and veal are removed from the above competition 25 percent of the time during which customers shop. Not only is the consuming public inconvenienced by the restriction; farmers and ranchers also feel the impact.

## ARGUMENT.

### I.

**THE LIMITATION UPON MARKET OPERATING HOURS AND THE CONTROVERSY CONCERNING IT ARE NOT WITHIN THE LABOR EXEMPTION OF THE SHERMAN ANTITRUST ACT.**

(a) Labor unions are exempt from the reach of the Antitrust Laws only when they are lawfully carrying out their legitimate objects or when they are lawfully involved in a dispute concerning terms or conditions of employment.

The history of antitrust laws in the United States is so well known that it need not here be repeated, except to overcome conceptual problems. Suffice it to say, laborers and farmers alike feared that the Sherman Act would not only destroy the great business trusts which they opposed, but also it would destroy the right to organize unions and cooperatives. The Clayton Act was passed in 1914, somewhat allaying these fears.

Subsequently, the Capper-Volstead Act was passed to further protect cooperatives, and the Norris-LaGuardia Act was passed to further protect labor organizations.

For purposes of this case, the language of the Clayton Act, read in the light of the Norris-LaGuardia Act, is controlling. The Norris-LaGuardia Act was passed to further restrict the use of injunctions, to legalize the secondary boycott, and to broaden the definition of a labor dispute. Section 6 of the Clayton Act provides that the antitrust laws do not forbid labor organizations or indi-

vidual members "from lawfully carrying out the legitimate objects thereof." Section 20 of the same act provides that an injunction should not issue in "a dispute concerning terms and conditions of employment."

The meaning of "legitimate objects" and of "labor dispute" Congress left to the courts to interpret. Consequently, the scope of the labor exemption will be determined on a case by case basis. The Court has consistently refrained from interpreting the antitrust acts as wholly exempting labor unions from the Sherman Act. *Duplex Printing Press Co. v. Deering*, 254 U.S. 443; *Apex Hosiery Co. v. Leader*, 310 U.S. 448; *Allen Bradley Co. v. Local Union No. 3*, 325 U.S. 797. Among those cases, Congress had and took the opportunity to express itself. When the decisions did not grant labor organizations a sufficiently broad exemption, further legislation was passed. Since the last decision above was rendered, however, Congress has not broadened the exemption. Indeed, proposals have been of the order to make abundantly clear that the exemption is not to be construed as complete. See Cox, Labor and Anti-Trust Laws—A Preliminary Analysis, 104 U. Pa. L. Rev. 252 (1955).

Recent expressions of this Court continue to reaffirm the supremacy of those laws which foster competition. In *United States v. Maryland & Virginia Milk Producers Association, Inc.*, 362 U.S. 458, the Court stated that the provisions of Section 6 of the Clayton Act "relating to labor unions do not manifest 'a congressional purpose wholly to exempt' them from the antitrust laws, and neither the language nor the legislative history of the section indicates a congressional purpose to grant any broader immunity to agricultural cooperatives." At 464-65.

(b) The marketing hours restriction controversy is not a legitimate object of labor or a dispute concerning wages, hours or other terms and conditions of employment.

While the legitimate objects of a labor union are many and varied, the contract clause in controversy does not relate to any proper objective of organized labor. It does not relate to working hours, rates of pay, job protection or other conditions of employment. Put simply, it restrains trade and inconveniences the public, the District Court found. Labor on the products has ceased. Union members have prepared the fresh meat, packaged it, placed it in display cases and arranged it for consumer selection. Whatever happens thereafter is beyond the objects and purposes of organized labor. Consequently, the restriction in question is outside of the area of union concern.

The purpose of the unions in fixing the meat counter closing time at 6:00 o'clock p.m. is said to be to insure butchers that they may perhaps one day open their own shops without having to work exceedingly long hours as private entrepreneurs. (App. 95-96.) The objective, therefore, is not for the benefit of union members but for the benefit of private meat market owners. It does not now and never will protect the health of a union member. Viewed in this light, the restriction appears as what it is—a bald regulation of business competition serving no legitimate purpose.

The fact that trade after 6 o'clock p.m. is considered by the unions to be undesirable is not a good reason for allowing it to be destroyed. All labor conduct in restraint of trade is not to be exalted. *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490. We respectfully suggest that sincere advocates of the rights of labor unions must not



yield to the social arguments of extremists in the labor movement who contend that we must continue to "progress" toward the acceptance of the doctrine that what is good for the labor union must be good for all society, and that all laws must be so interpreted and enforced.

Since the *Allen Bradley Case*, many lower courts have had occasion to apply its doctrine, rejecting the unions' claim that whenever their efforts are calculated to advance the interests of their members the effect upon others is not to be considered. *United States v. Milk Drivers and Dairy Employees Union*, 153 F. Supp. 803 (D. Minn. 1957); *I.P.C. Distributors v. Chicago Moving Picture Machine Operators Union*, 132 F. Supp. 294 (N.D. Ill. 1955); *Rogers v. Poteet*, 355 Mo. 986, 199 S.W. 2d 378 (1947); *Kold Kist v. Amalgamated Meat Cutters and Butchers*, 99 Cal. App. 2d 191, 221 P. 2d 724 (1950). The last case is very similar to the one at bar, involving, as it did, a marketing hours restriction on the sale of frozen meats, poultry and fish.

(c) General principles of statutory construction dictate that the Antitrust Acts be given effect in the marketing hours controversy.

(1) Harmonization of the Antitrust Laws and Labor Laws requires the declaration that the marketing hours restriction is illegal.

"Whether trade union conduct constitutes a violation of the Sherman Law is to be determined only by reading the Sherman Law and Section 20 of the Clayton Act and the Norris-LaGuardia Act as a harmonizing text of out-lawry of labor conduct." *United States v. Hutcheson*, 312 U.S. 219, at 231.

"The result of all this is that we have two declared congressional policies which it is our responsibility to try to reconcile. The one seeks to preserve a competitive business economy; the other to preserve the rights of labor to organize to better its conditions through the agency of collective bargaining. We must determine here how far Congress intended activities under one of these policies to neutralize the results envisioned by the other." *Allen Bradley Co. v. Local No. 3*, 325 U.S. 797, at 806.

The policies of these statutes should be compared with the objectives of the parties. It actually is the latter which must be examined to determine which of the two statutory policies should be here given effect, all the while minimizing the discouragement which is consequently wrought upon the opposing Congressional policy. Both policies can be given effect at the same time by preferring the one which does least damage to the other.

Jewel's purpose here is to serve consumer demands. By doing so, it creates greater volume and profit for itself, more jobs for butchers and a wider market for farmers.

Americans are a busy people, often in a hurry. They shop when it is convenient for them to do so, and they have money to buy those items which they prefer. Fresh meat is preferred by consumers, as are other fresh foods. Yet in their haste, Americans do not wait until they can purchase the preferred item; they purchase a substitute instead when their preference is unavailable.

Jewel as an expert retailer of fresh meat has to offer its products for sale when the consumers are buying or Jewel will not sell them at all. These reasons motivate

Jewel to contest the marketing hours restriction contained in its collective bargaining contract, and these are the desires which the Antitrust Laws seek to promote.

The unions, on the other hand, have as their purpose and objective the strengthening of collective bargaining through the organization of labor so as to improve terms and conditions of employment. Such purpose is the policy of the United States to promote, that laborers will not be exploited and that this vast segment of American society will share the abundance and wealth which the nation enjoys.

The services of butchers are irrevocably tied to the products they prepare. Union members undoubtedly believe that the tighter their collective control of the product, the stronger their hold is on their jobs, on their security and on their welfare. Consequently, the objective of the unions in this controversy is not purely arbitrary.

Construing both policies expressed in the statutes liberally, attempting to encourage both, less harm is done by allowing the policy favoring competition to prevail.

The serious inconvenience to consumers, the detrimental effect on American agriculture and the restriction on grocery-retailer competition are the losses caused if the labor law is to govern here. The losses, if any, wrought by favoring competition and the antitrust laws which implement it, surely cannot be as great. This is the balancing, the harmonizing, which must be done.

(2) Consideration of other expressions of policy by Congress requires that the marketing hours restriction be declared illegal in this controversy.

Farmers' costs of production have been steadily increasing while prices received for farm products have been decreasing. In other words, the farmer has been caught in a cost-price squeeze. The Federal government has been spending billions of dollars annually to help alleviate the agricultural situation.

Increased costs of doing business, of which direct and indirect labor costs are important, have been responsible to a large degree for the present cost-price squeeze facing agriculture. To lessen the financial burden of the Federal government and to strengthen the economy of this segment of our society, it is necessary that every effort be made to avoid further restraints on the normal movement of food products from the farm to the consumer. The elimination of such restraints is not only in the interests of all farmers and ranchers, it is also in the best interest of the consumer. In other words, it is in the public interest to avoid impairments of competition, whether committed by industry, labor or agriculture.

Such restraints on the free flow of commerce burden commerce by increasing the cost of fresh meat products to the consumer and also by placing fresh meat at an unfair disadvantage in competition with canned and frozen meat products, some of which have been produced in foreign countries where production and processing costs are not as high. The lower the price consumers pay for fresh meat, the more they will consume. But the farmer's cost of production is only one item of the total cost which the purchaser of a package of fresh meat must pay. An

other item is the cost of refrigerator display cases. That cost is the same whether the case is used one hour, nine hours or twelve hours a day. The more fresh meat that is sold from the case, the more the cost is spread, lowering the cost borne by each package. The resulting increased consumption of fresh meat benefits the health and the purse of the public, in addition to increasing market opportunities for farmers in the sale of fresh meat.

It is generally recognized that farmers benefit much more when farm products are marketed as fresh produce. Consumers generally prefer fresh farm products rather than a processed commodity. This is evidenced by the fact that consumers prefer to purchase fresh meat if it is available at reasonable prices. Farmers derive a larger portion of the consumers' dollar when their livestock is sold as fresh meat rather than if sold as processed meat or as other materials added to processed foods. However, if artificial barriers and restraints of trade are permitted to exist, both the consumer and the farmer suffer. Unfair marketing practices cause the price to the consumer to be higher than justified, thereby resulting in a smaller demand for fresh meat. This naturally results in restricted markets for agriculture's major industry.

These practices stimulate sales of foreign canned and frozen meat as foreigners can produce and process livestock at lower labor and other production costs. This results in a hinderance to the domestic agriculture situation and to the American economy in general and, consequently, is contrary to the public interest.

The activities of the butchers' unions are also directly responsible for transferring job opportunities to foreign



workers, at the expense of American workers. For every pound of foreign meat or meat substitutes that is sold during the restricted hours a comparable amount of wages for an American employee is lost. American dollars, along with job opportunities, are being exported when it is in the public interest to improve our balance of payments as well as to create more employment opportunities in the United States.

Consumers have been the recipients of technical improvements in food production and distribution. Competition has been shortening the marketing bridge from farmer to consumer. Any unreasonable interference with the flow of food products through this "marketing bridge" is contrary to the public interest and is illegal.

No one should forget that members of unions are also consumers and that, as such, all union members stand to lose by unreasonable marketing practices which add to the cost of food.

Farm Bureau shares the concern expressed by the Seventh Circuit Court of Appeals, *Jewel Tea Company, Inc. v. Amalgamated Meat Cutters*, 331 F. 2d 547 at 551, quoting from its earlier opinion, 274 F. 2d at 221, that if an employer can not make management decisions regarding the hours that he may keep certain departments of his store in operation, he may be forced by union activity to forego more and more management decisions even though they are not related to conditions of employment. If the unions' position in this case is sustained by this Court, it is conceivable that unions can bargain on such other decisions as where a food store may be located, what products may be sold at the store, who may supply the products for the store, and what prices (mini-

mum and maximum) may be charged. There is no limit to which labor unions could go in closing down, or regulating, other types of business activity, such as elevators, printing presses, airlines or railroads.

## II.

### **THE NATIONAL LABOR RELATIONS BOARD DOES NOT HAVE EXCLUSIVE JURISDICTION OF ANTITRUST CONTROVERSIES WHICH INVOLVE LABOR UNIONS.**

None of the antitrust laws depend upon a specialized agency for their administration. Federal courts historically have and now do administer this body of law. We do not agree with the unions' position that this controversy is within the exclusive primary jurisdiction of the National Labor Relations Board.

The unions' position is somewhat similar to the position taken by the cooperative in the case of *United States v. Maryland & Virginia Milk Producers Association, Inc.*, 362 U.S. 458. The chief defense of the association in that case was that "because of its being a cooperative composed exclusively of dairy farmers, Section 6 of the Clayton Act and Sections 1 and 2 of the Capper-Volstead Act completely exempted and immunized it from the anti-trust laws with respect to the charges made in the government's complaint." Section 2 of the Capper-Volstead Act authorizes the Secretary of Agriculture to issue a cease-and-desist order upon a finding that a cooperative has monopolized or restrained trade to such an extent that the price of an agricultural commodity has been "unduly enhanced".

This Court, in considering the arguments of the association, concluded:

The contention is that this provision was intended to give the Secretary of Agriculture primary jurisdiction, and thereby exclude any prosecutions at all under the Sherman Act. This Court unequivocally rejected the same contention in *United States v. Borden*, 308 U.S. 188, 206, after full consideration of the same legislative history that we are now asked to review again. We adhere to the reasoning and holding of the *Borden* opinion on this point. 362 U.S. at 462-63.

In the *Borden* case the Court stated that:

We find no ground for saying that this limited procedure (Section 2 of Capper-Volstead Act) is a substitute for the provisions of the Sherman Act, or has the result of permitting the sort of combinations and conspiracies here charged unless or until the Secretary of Agriculture takes action. That this provision of the Capper-Volstead Act does not cover the entire field of the Sherman Act is sufficiently clear. 308 U.S. 188, at 206.

And, it is entirely defensible that Congress should so intend and the courts so hold. The case here before the Court is directly between a retail food chain and unions, but its decision is of great interest and will have great impact on the largest industry in the United States. This controversy and most antitrust cases are ones requiring not so much expertise in either labor or economics as they do the broad overview of public policy and objectives inherent in the courts. The duty of the N.L.R.B. is to foster collective bargaining, to encourage labor unions and to promote industrial peace. Where do farmers and the business of agriculture fit into the picture? Courts are better able to protect these minority interests which are otherwise liable to be excluded from consideration by specialized agencies looking only to the development and protection of the specific groups with which they work.

**CONCLUSION.**

We respectfully urge that the judgment of the Court of Appeals for the Seventh Circuit of April 27, 1964, reversing the judgment of the District Court of November 28, 1962, be affirmed and that the case be remanded to the District Court with directions to enter a declaratory judgment and an injunction against the defendants herein and to ascertain and award to plaintiff such monetary relief as may be appropriate.

Respectfully submitted,

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January 8, 1965

**AFFIDAVIT OF SERVICE.**

L. Gene Lemon, being duly sworn, deposes and says that in compliance with paragraph 33(1) of this Court's Rules, he deposited a copy of the above Brief in the United States Post Office in the City of Chicago, properly addressed to the attorneys for the parties, with first-class postage fully prepaid on the *Eighth* day of *January*, 1965.

/s/ L. Gene Lemon  
Of Counsel

Subscribed and sworn to before me this *Eighth* day of *January*, 1965.

/s/ Myrtle Robinson  
Notary Public (Seal)

My commission expires on  
October 5, 1966.



MOTION FILED

JAN 8 1965

IN THE  
Supreme Court of the United States

OCTOBER TERM, 1964

No. 246

LOCAL UNIONS Nos. 198, 262, 320, 546, 547, 571, AND 638,  
AMALGAMATED MEAT CUTTERS AND BUTCHER WORK-  
MEN OF NORTH AMERICA, AFL-CIO, ET AL.,  
*Petitioners,*

*v.*  
JEWEL TEA COMPANY, INC., *Respondent.*

On Writ of Certiorari to the United States Court of Appeals  
for the Seventh Circuit

MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS  
CURIAE AND BRIEF FOR THE NATIONAL INDEPEND-  
ENT MEAT PACKERS ASSOCIATION AS AMICUS  
CURIAE

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January 9, 1965

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1964

No. 240

LOCAL UNIONS NOS. 198, 262, 320, 546, 547, 571 AND 638,  
AMALGAMATED MEAT CUTTERS AND BUTCHER WORK-  
MEN OF NORTH AMERICA, AFL-CIO, ET AL.,  
*Petitioners,*

v.

JEWEL TEA COMPANY, INC., *Respondent,*

On Writ of Certiorari to the United States Court of Appeals  
for the Seventh Circuit

**MOTION FOR LEAVE TO FILE A BRIEF  
AS AMICUS CURIAE**

The National Independent Meat Packers Association hereby respectfully moves for leave to file a brief as *amicus curiae* in support of the respondent. The consent of the attorneys for the respondent has been obtained. The consent of the attorneys for the petitioners was requested but refused.

The National Independent Meat Packers Association is comprised of several hundred meat packing firms located in all parts of the United States, which are engaged in virtually every aspect of meat packing industry operations. Its membership thus includes both "slaughterers" and "processors", as well as many firms which are engaged in both types of operations. The word "independent" in the title of the Association's name indicates that the members, in general,

operate a single plant serving a community or region, in contrast to meat packers whose products have national or near-national distribution.

The basic question at issue in this case is the legality of a collective bargaining contract provision which prohibits the sale of fresh meat within the Chicago metropolitan area during certain hours. The litigants in this case represent the divergent views of the local unions and various employer-retailers. The restriction on the retail sale of fresh meat has a substantial adverse affect, however, on the meat packers who supply fresh meat to Chicago retailers. Furthermore, if such a restriction is declared to be legal in the case of the entire Chicago area, presumably similar restrictions could be put into effect in other areas all over the country. The meat packing industry therefore will be vitally affected by the outcome of this litigation. For these reasons, and for the additional reasons set forth in the accompanying brief, the National Independent Meat Packers Association respectfully requests permission to file the accompanying brief as *amicus curiae* setting forth its views and position with respect to the issues in this case.

Respectfully submitted,

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January 9, 1965



**ARGUMENT****INTRODUCTION**

This case presents important issues with respect to the interrelationship of the federal antitrust laws and the labor laws. It is apparent that the underlying policies of the two sets of laws frequently will conflict, inasmuch as one of the basic objectives of the antitrust laws is to prevent concerted restraints against competition, whereas a declared purpose of the labor laws is to sanction certain concerted activities of labor unions as being beyond the purview of the antitrust laws.

The focal point of this controversy is a provision in a labor agreement between Chicago food retailers and their unions which effectively prevents the public at large in the city of Chicago and the surrounding area from being able to purchase fresh meat after six o'clock in the evening. The legality of this provision is of vital concern to the members of the National Independent Meat Packers Association. It involves serious restrictions on the marketing of fresh meat, and it presents important questions concerning the extent to which labor agreements may interfere with management's right to control its business so that it may compete freely in meeting legitimate consumer demands.

The restrictive provision at issue here reads "Market operating hours shall be 9:00 a.m. to 6:00 p.m. Monday through Saturday, inclusive. No customer shall be served who comes into the market before or after the hours set forth above . . . ." (R. 17x, 18x § 5.1) The order granting certiorari in this case limits

the scope of review to the first two of the six "Questions Presented" set forth in the unions' petition for certiorari. This brief is directed only to the first question, which may be defined more accurately in two parts, as follows: (a) whether a provision in a multi-employer collective bargaining contract which effectively prohibits the sale of fresh meat within a large metropolitan area during periods of substantial consumer demand constitutes an unreasonable restraint of trade and (b) if so, whether such provision nevertheless is immunized from the force of the Sherman Act<sup>1</sup> by the "labor exemption" afforded by the Clayton<sup>2</sup> and Norris-LaGuardia<sup>3</sup> Acts.

## I.

**THE MARKET OPERATING HOURS RESTRICTION CONSTITUTES AN UNREASONABLE RESTRAINT OF TRADE**

The Seventh Circuit Court of Appeals, in its opinion in the interlocutory appeal upholding the sufficiency of the complaint, ruled that a trial was necessary in this proceeding. The parties were to present evidence concerning "facts peculiar to the business to which the restraint is applied," "the nature of the restraint and its effect, actual and probable," "the history of the restraint", etc. (274 F.2d 217, 223). This evidence would permit a determination as to whether the market operating hours restriction effected an unreasonable restraint of trade. The evidence adduced demonstrates that the restriction does cause a number of restraints of trade which are clearly unreasonable.

<sup>1</sup> 26 Stat. 209, 15 U.S.C. 1.

<sup>2</sup> 38 Stat. 730, 15 U.S.C. 12.

<sup>3</sup> 47 Stat. 70, 29 U.S.C. 101.

**A. The Market Operating Hours Restriction Suppresses Competition Between Suppliers of Fresh Meat and Suppliers of Meat-Substitute Food Products.**

Since the primary competitive substitutes for, fresh meat, i.e. poultry and fish, are available to consumers when fresh meat is not, there is no question that the restriction must of necessity affect competition between fresh meat and these primary substitute food products. Indeed the restriction against the sale of fresh meat during the prime evening shopping hours, when these substitute products are available, results in a serious competitive disadvantage to Chicago purveyors of fresh meat.

A graphic indication of the extent of such competitive disadvantage may be gleaned from the testimony of the unions' primary witness, who stated that the reason "permission" was granted to retailers in 1957 for the sale after 6:00 p.m. of fresh poultry (which theretofore had been subject to the same restriction presently applicable to fresh meat) was that "the sale of frozen poultry had made such inroads into the market, and particularly from 6:00 to 9:00, that sale of fresh poultry . . . was slowly but surely dying on the vine." (R. 600)

Although the district court found that "[T]here is no evidence . . . that [the restriction] . . . adversely affected one purveyor more than another," citing *Philadelphia Record Co. v. Mfg. Photo-Engravers Ass'n of Philadelphia*, 155 F. 2d 799 (3rd Cir. 1946), it is apparent that this finding involves a comparison only between purveyors "of fresh meat," inasmuch as the first portion of the finding explicitly refers to "competition among purveyors of fresh meat" and the cited *Philadelphia Record Co.* case does not deal with competition between suppliers of different products but only with competition between suppliers of a like service, i.e., photo-engraving.

**B. The Market Operating Hours Restriction Suppresses Competition Between Food Retailers in the Chicago Area.**

The single, overriding factor in this case, which stands out above all else, is that the effect of the market operating hours restriction has been to frustrate entirely the respondent's desire to sell fresh meat during evening hours in response to demonstrated consumer demand therefor. The unions have tried to gloss over this fact by implying that the "fluctuating attitudes" of and absence of any real desire on the part of a majority of retailers in the Chicago area to provide evening sales of fresh meat indicate the "doubtful benefits" thereof and a lack of any substantial consumer demand therefor. There is, of course, little logical connection in the circumstances presented here, between the failure to provide evening sales of fresh meat and the existence of consumer demand for such sales.

In any event, the absence of a desire on the part of retailers, generally, to provide evening sales of fresh meat, far from justifying the restriction would, on the contrary, tend to prove its illegality. The effect of the restriction, in such case, actually is to abet the retailers' lack of desire to compete with each other, or more specifically with Jewel Tea Co., in the sale of fresh meat during evening hours. Whatever arguments petitioners may advance to the contrary, therefore, the plain fact remains that the marketing hours restriction does have the effect of (a) suppressing competition between meat retailers in the Chicago area through increased utilization of self-service counters and (b) completely eliminating competition between such retailers with respect to hours of service.



**C. The Market Operating Hours Restriction Suppresses Other Segments of Competition in the Chicago Area.**

It is difficult to determine the full extent of the restraints on various other segments of competition caused by this artificial restriction on marketing hours which disrupts the normal free flow of fresh meat from the producer to the consumer. However, it is apparent that in addition to the competition described in the preceding two sections, the restriction also affects competition (a) between fresh meats and processed meats, (b) between fresh meats and non-meat protein foods such as macaroni, noodles, non-meat pizza, cheese, etc., and (c) between food retail stores and restaurants.

**D. The Market Operating Hours Restriction Is Unreasonable.**

Since, as discussed above, the restriction on the marketing hours does suppress competition and restrain trade in the sale of fresh meat, it must be considered whether this restraint is a reasonable one.

The ruling of this Court in *Chicago Board of Trade v. United States*, 246 U.S. 231 (1918), is highly pertinent on this question. In that case, this Court upheld a commodity exchange regulation which restricted free competition to some extent but, on balance, served to promote competition rather than to restrict it. This Court set out the basic test of reasonableness as follows:

"The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition, or whether it is such as may suppress or even destroy competition." (246 U.S. at 238).

and it then went on to specify the types of matters to be considered in thus determining reasonableness.



These were the same matters<sup>5</sup> as those specified by the Court of Appeals below in sending this case back for trial.

The test established by this Court in the *Chicago Board of Trade* case continues to be the accepted standard for determining the reasonableness of restraints on competition. Cf. *White Motor Co. v. U. S.*, 372 U.S. 253 (1963); *Rogers v. Douglas Tobacco Trade, Inc.*, 244 F. 2d 471 (5th Cir. 1957); *U. S. v. Jerrold Electronics Corp.*, 187 F. Supp. 545 (E.D. Pa. 1960).

Hence, it must be determined whether the restriction here in question, on balance, restrains or promotes competition. That the marketing hours restriction has the effect of suppressing competition in a number of different areas has been demonstrated in the previous three sections. Indeed the appellate court summarized the evidence as follows:

"There is no evidence in this record showing that the net effect of the market hours restraint promotes competition. The opinion of the district court is devoid of any finding to that effect. On the contrary, the record shows that the effects of the restriction are wholly negative and destructive of competition." (331 F. 2d at 550).<sup>6</sup>

<sup>5</sup> I.e., "facts peculiar to the business to which the restraint is applied," "the nature of the restraint and its effect, actual and probable," "the history of the restraint", etc. (See p. 2, *supra*.)

<sup>6</sup> The Solicitor General's *amicus* brief in this proceeding notes that the provision regarding marketing hours "restricts commercial competition among employers in the sale of goods to such an extent that it would violate Section 1 if entered into by employers alone, acting solely in their own self-interest." (Br. pp. 8-9). It should be noted further that in reaching this conclusion the Solicitor General was considering only one of the several areas of competition in which the restriction imposes a restraint, i.e., competition between food retailers.

One important factor to be taken into consideration in determining reasonableness under the test set forth in the *Chicago Board of Trade* case is "the purpose or end sought to be attained" by imposition of the restraint. (246 U.S. at 238) The purposes stated by the unions for their desire to have the restriction are, in essence, (a) to prevent butchers from having to do "night work" (by which is meant evening work between 6 and 9 p.m.), (b) to prevent non-butchers from handling, wrapping, or otherwise dealing with fresh meat and (c) to prevent "over-loading" butchers by requiring them to prepare additional meat during the daytime for sale from self-service counters after 6 p.m. The speciousness of these aims, as related to the restriction on marketing hours for fresh meat, is easily demonstrable.

In the first place, the labor contract requires that only butchers will be permitted to handle, wrap, or otherwise deal with fresh meat. There is no reason to believe that the employer-retailers would not honor this provision in the event they were permitted to provide evening sales of fresh meat from self-service counters, and arguments to the contrary are nothing more than pure speculation. Secondly, let us assume, *arguendo*, (a) that there is need for a butcher on duty in connection with evening sales from self-service counters, or (b) that full service counters will be operated in the evening, or (c) that additional meat did have to be prepared during the day for evening sales. All of these factors actually would produce additional jobs for butchers rather than work to their disadvantage. Furthermore, it is apparent that only one of these factors—evening operation of full service counters—would require any appreciable number of butchers

to work after 6 p.m. However, the trial court found that there are butchers willing to work after 6 p.m. (215 F. Supp. at 844), and there may even be some who would prefer to do so, as far as is known. Thus, the restriction actually serves (a) to reduce the number of jobs available to butchers and (b) to prevent some butchers from earning extra pay by working during evening hours or working at times possibly more convenient to them, while at the same time seriously inconveniencing the consumer public.

In any event, it is clear that there is no need for the blanket restriction against sales of fresh meat after 6 p.m. inasmuch as the matter could readily be solved by union-employer collective bargaining as to the wages to be paid those few butchers who might be needed to work after 6 p.m. in connection with self-service counter operations. A blanket restriction against all sales of fresh meat after 6 p.m. therefore is unnecessary and unreasonable. Since the marketing hours restriction clearly is an unreasonable restraint of trade, the only question remaining is whether or not it comes within the so-called "labor exemption".

## II.

### THE MARKET OPERATING HOURS RESTRICTION IS NOT PROTECTED BY THE "LABOR EXEMPTION"

The "labor exemption" afforded by the Clayton and Norris-LaGuardia Acts is relatively narrow and sharply defined. Sections 6 and 20 of the Clayton Act exempt labor unions (a) when they are carrying out

The plaintiff "adduced testimony of numerous witnesses that they were inconvenienced by the restriction on night sales of fresh meat, and would buy more meat if night hours were available." (215 F. Supp. at 844).

their "legitimate objects" and (b) in cases involving or growing out of a dispute "concerning terms or conditions of employment." Similarly, Section 4 of the Norris-LaGuardia Act grants labor unions an exemption in cases involving or growing out of a "labor dispute", which is defined in Section 13 of the Act to include only controversies concerning (a) "terms or conditions of employment" or (b) "the association or representation of persons" for collective bargaining purposes.

There is no controversy here concerning "the association or representation" of butchers, since no one has questioned the right of butchers to organize or the right of the union petitioners to speak for them. Thus, the only matters to consider in determining the applicability of the "labor exemption" here are (a) whether a restriction on market operating hours is a legitimate objective of labor unions and (b) whether the matter of market operating hours is a "term or condition of employment." Both of these questions, we submit, must be answered in the negative.

The petitioners here would extend the "labor exemption" far beyond any previously defined limits. In fact they make the suggestion that only three requirements are necessary for a restriction such as is involved in this case to fall within the "exemption", i.e., (a) it must have been arrived at through "arm's length bargaining," (b) the union must have been acting in what it considered to be its own self-interest and (c) the union must have been acting "independently of aid to a business men's combination". (Br. pp. 61-62) The absurdity of this position is apparent when one realizes that this would permit labor unions to effectuate practically unlimited restraints of trade, so long as they



acted in their own self-interest and independently of aid to employer groups, merely by showing that such restraints had some indirect effect on terms and conditions of employment.

This Court has clearly ruled, however, that a restraint effectuated by a union acting in what it considered to be its own self-interest in enhancing the terms and conditions of employment of its members is not exempted from the Sherman Act unless it is a necessary result of an agreement upon terms and conditions of employment. *Allen Bradley Co. v. Local Union No. 3*, 325 U.S. 797 (1945); *U. S. v. Employing Plasterers Ass'n.*, 347 U.S. 186 (1954); *U. S. v. Women's Sportswear Manufacturers Association*, 336 U.S. 460 (1949); *United Brotherhood of Carpenters v. U. S.*, 330 U.S. 395 (1947). The rationale of these cases is that union demands which are not directly related to terms and conditions of employment and which are thus not necessary to attain legitimate labor objectives are not protected activity within the "labor exemption."

The petitioners claim that market operating hours constitute a term or condition of employment because they are "rooted" in working hours, in wages, and in other conditions of employment. (Br. p. 63) Actually, elimination of the restriction on marketing hours would have no necessary effect on the wages, number of hours worked, or workload of the members of the butchers unions. The unions can bargain as to all these matters. However, by insisting upon restrictions which limit the time of day during which an entrepreneur may market his wares a union exceeds its legitimate labor objectives and intrudes into an area which



affects a basic managerial decision historically reserved to the entrepreneur.

This Court's latest pronouncement on this subject was in its recent decision in *Fibreboard Paper Products Corp. v. NLRB*<sup>\*</sup> where the Court explicitly recognized the necessity of protecting an employer's freedom to manage his business. In *Fibreboard* the Court required an employer to bargain with respect to contracting-out of plant machinery maintenance work only after finding that (a) the action proposed by the employer affected job security and (b) requiring him to bargain "would not significantly abridge his freedom to manage the business." (33 U.S.L. Week at 4092) In the instant case, however, there is no *bona fide* issue of job security, and the restriction obviously does abridge the freedom of food retail store operators in the Chicago area to manage their businesses. Thus this case falls squarely within the category of cases cited by Justice Stewart, in his concurring opinion in the *Fibreboard* decision, with the observation that "at least seven circuits have interpreted the statutory language ['conditions of employment'] to exclude various kinds of management decisions from the scope of the duty to bargain." (*Id.* at 4095) [Footnote citations omitted.] In order to distinguish the cited cases from the *Fibreboard* case, Justice Stewart added "Nothing the Court holds today should be understood as imposing a duty to bargain collectively regarding . . . managerial decisions, which lie at the core of entrepreneurial control" and "those management decisions which are fundamental to the basic direction of a corporate enterprise or which impinge

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<sup>\*</sup> 33 U.S.L. Week 4089 (U.S. Dec. 15, 1964).

only indirectly upon employment security should be excluded from that area." (*Ibid.*)

As stated by the Court of Appeals in the instant case, "Setting marketing hours is one such proprietary function which an employer has the exclusive right to determine as dictated by economic factors present within his trading area." (274 F. 2d at 221) The unions' attempt to control these hours not only usurps the legitimate proprietary function of the employer but also subjects the general public to great inconvenience and should not be protected from the force of the antitrust laws.

The petitioners place reliance primarily on two cases—*Railroad Telegraphers v. Chicago and North Western Railroad Co.*, 362 U.S. 330 (1960), and *Adams Dairy Co. v. St. Louis Dairy Co.*, 260 F. 2d 46 (8th Cir. 1958). These cases are distinguishable from this case, however. The *Adams* case resulted from a dispute over an industry-wide wage formula and thus clearly, unlike the instant case, involved a term or condition of employment, *i.e.*, wages. The *Railroad Telegraphers* case involved a controversy with respect to job security resulting from the proposed abandonment or consolidation of unnecessary railroad stations. Petitioners argue that the holding of this case is directly in point, claiming that job security of union members is one of the purposes of the marketing hours restriction. The fact is that far from protecting butcher jobs the restriction actually *limits* the number of jobs which otherwise would be available for butchers.

**CONCLUSION**

For the reasons set forth above, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1964

—  
No. 240  
—

LOCAL UNIONS NOS. 189, 262, 320, 546, 547, 571 and 638,  
AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN  
OF NORTH AMERICA, AFL-CIO, ET AL., *Petitioners*

v.

JEWEL TEA COMPANY, INC., *Respondent*

—  
On Writ of Certiorari to the United States Court of Appeals  
for the Seventh Circuit  
—

**REPLY BRIEF FOR PETITIONERS**

—  
**I. REPLY TO GOVERNMENT'S POSITION ON THE AP-  
PLICATION OF THE ANTITRUST LAWS TO LABOR  
ACTIVITY**

Under the beguiling lure of deciding no more than necessary, the Government would initiate a major revision in the application of the antitrust laws to labor activity. Perhaps the moral to be drawn from the Government's position should be stated at the outset. Not only may hard cases make bad law. So too may easy cases by making it possible to assign the wrong reasons for the right result.



1. *The Government's position:* We begin by stating our understanding of the Government's position as a preliminary to treating with it.

The subjects of labor agreements are divided into three classes: class 1 pertains to contracts upon mandatory subjects of collective bargaining "whose direct impact is confined to the labor market and which affect competition in product markets only consequentially;" class 2 pertains to contracts upon mandatory subjects of collective bargaining "of direct concern to employees which also operate as direct restrictions upon entry or competitive practices in a product market;" class 3 pertains to contracts restricting commercial competition "which benefit employees only indirectly by enabling employers to increase the earning power of the business and thus to pay higher wages." (Govt. br. pp. 25-26, 52.)

Subject to a number of qualifications, agreements in classes 1 and 2 are not contracts "in restraint of trade" prohibited by section 1 of the Sherman Act. The fact of agreement and its anticompetitive consequences, either intentional or in inherent effect, are immaterial (Govt. br. p. 36.) Two qualifications apply to agreements in each class. *First*, a labor organization which operates a business would violate section 1 by using its leverage as a union to suppress competition with its business enterprise. *Second*, the union violates section 1 when the restriction the agreement imposes is established in collaborative aid of an independent conspiracy of businessmen. (Govt. br. pp. 33-34, 44-45.) To bring a case within qualifications 1 and 2, proof independent of the agreement and its economic consequences is essential (Govt. br. pp. 36, 44-45), but it is unclear whether the agreement and its consequences may be considered once independent evidence is adduced, nor is it clear how much and what kind of independent evidence would suffice to widen the inquiry into consideration of the agreement and its consequences.

A third qualification is expressed concerning agreements in class 2. An agreement would violate section 1 of the Sherman Act which, while nominally yielding a direct benefit to employees, is shown to be a subterfuge for manipulation of the product market in the interest of employers (Govt. br. pp. 45, 58). Although not committing itself the Government inclines to the view that, to bring qualification 3 into play, there should be independent proof, beyond any inference to be drawn from the agreement itself, showing that the contract is essentially an anticompetitive device (Govt. br. p. 46.) Otherwise the test leads back to an appraisal of the desirability of the benefit to the employee as opposed to the consequence of the restriction (*ibid.*), an approach which the Government abjures (Govt. br. pp. 32-33, 40-44). On the view that proof independent of the agreement is required, there seems to be no essential difference between qualifications 2 and 3. In any event, there would appear to be no way to establish that a restriction is a mere device except by independent proof. Finally, the only other way to distinguish between qualifications 2 and 3 is on the assumption that, while the contractual restriction is a device, it is the union's independent idea imposed on resisting or indifferent employers, rather than adopted as a collaborative aid to an independent businessmen's conspiracy. The examples given do not support this assumption (Govt. br. p. 45). Furthermore, on this assumption, the situation more fittingly belongs to agreements in class 3, to which we presently turn, and is not appropriately expressed as a further qualification on class 2 agreements. Accordingly, in view of the Government's ambivalence, its lack of clarity, and the correct classification of qualification 3 either as indistinguishable from qualification 2 or as a class 3 agreement, we do not further consider it as a separate category. This also means, we believe correctly, that there is no practical adjudicative distinction between class 1 and 2 agreements, and no practical adjudicative distinction between the qualifications assertedly applicable to each. The Government seems to agree, for it states that

in class 1 and 2 agreements, while the agreements are analytically different, "the legal conclusions are substantially the same" (Govt. br. pp. 26, 52-53).<sup>1</sup>

This leaves the class 3 agreement which, to repeat, imposes a direct restriction on commercial competition related to benefit to employees only by enabling employers to increase the earning power of the business and thus to pay higher wages. Since the Government would impose qualifications 1 and 2 upon agreements in classes 1 and 2, obviously at least the same qualifications would apply to agreements in class 3. The question then becomes whether an additional qualification should apply. The only additional qualification which can exist which would be distinctively applicable to a class 3 agreement can be expressed by posing the following question: Is a class 3 agreement reached as a result of arm's length collective bargaining, consummated independently of aid to a businessmen's conspiracy, prohibited by section 1 of the Sherman Act? It is this question which the Government would pretermit.

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<sup>1</sup> As nothing ultimately turns on it, we do not pause to consider the validity of the distinction between class 1 and 2 agreements. It may be noted that, as the point of the distinction is influence upon competition, the effect of the class 1 agreement is ordinarily likely to be more significant competitively than the effect of the class 2 agreement. Compensation for work still remains the greatest contribution to the cost of the labor bargain and therefore exerts the heaviest influence upon price competition. The idiom of "direct" and "consequential" effect, or "labor market" and "product market," does not measure impact on commercial competition, but reflects an impression that the justifiability of the impact is perhaps different depending on its source. That analysis in these terms leads nowhere is convincingly shown by the lack of consequence resulting from articulation of the separate classifications. Contrast also the inclusion of "work schedules" as a class 2 item with this Court's matter-of-fact recognition that "problems of work scheduling and shift assignment have been held to be appropriate subjects for collective bargaining under the Federal Act as administered by the National Labor Relations Board." *Amalgamated Association v. W.E.R.B.*, 340 U.S. 383, 399.

2. *The essential differences between petitioners' and the Government's position:* It will help at this stage to identify the points of divergence of petitioners' position from the Government's.

(a) A class 1 and class 2 agreement is not subject to qualification 2. The agreement is on a matter within the scope of mandatory bargaining. It fixes a labor standard. It consummates a statutory duty to bargain. As to such an agreement there is no room for inquiry into whether or not the agreement is a product of union aid to an independent antitrust conspiracy among businessmen.

(b) A class 3 agreement is a contract upon a subject outside the scope of mandatory bargaining. If the agreement is illegal when entered into between businessmen without union abetment, it is no less illegal when union abetment is added to the businessmen's conspiracy. This is *Allen Bradley*. This is the proper and only scope of qualification 2. An agreement which is the product of union abetment of a business conspiracy is, however, radically different from an agreement reached as a result of arm's length bargaining—a union and employers arrayed on opposite sides bargaining independently and adversely. The validity of a class 3 agreement which is the product of arm's length bargaining is inherent in *Allen Bradley*. To pretermitt the legality of such an agreement is to pretermitt the continuing vitality of *Allen Bradley* and thus to throw the entire subject into utter uncertainty.

(c) As to qualification 1. A union that owns and operates a business is no different from any other business entity when it acts in its entrepreneurial capacity. It has no antitrust immunity of any kind when it operates a consumer buying service for its members, constructs a building or leases space in it, or runs a medical center or recreation camp. This is not a qualification of an immunity but a caveat that a union as an entrepreneur has no immunity. But this caveat has no application in this case and not



even colorable application in *Pennington*. For the maximum that the evidence shows in *Pennington* is that the UMW owned stock in a coal company, held stock in that company and its subsidiary as collateral on loans, and the stock owned outright and held as collateral in the company aggregated more than one-half of the company's common stock (325 F.2d at 813-814). This shows that as stock owner and creditor the UMW had a substantial interest in the company. It does not begin to show that the UMW exercised its authority as bargaining representative to protect or enhance its business investment. And, unless suspicion is to rule, there must at minimum be a direct evidentiary nexus between action taken by the union in its capacity as bargaining representative and action taken by it in its separate capacity as entrepreneur before its business interest even becomes relevant.

(d) In sum, despite the Government's elaborate and somewhat rarified analysis in terms of classes of agreement and categories of qualifications, the questions distill to two. (1) Is an agreement which fixes a labor standard within the scope of mandatory bargaining subject to invalidation upon proof that the level at which the conferred benefit is set is the product of union abetment of an independent conspiracy of businessmen? Petitioners answer no and the Government yes. (2) Is an agreement upon a subject outside the scope of mandatory bargaining, which would constitute an antitrust violation if entered into exclusively between businessmen, subject to invalidation even though it is the product of arm's length bargaining between a union acting in its own interest to serve a labor end, on the one side, and a group of employers negotiating independently and adversely, on the other side? Petitioners answer no and the Government would pretermitt the question.

3. *An agreement upon a mandatory bargaining subject—the so-called class 1 and 2 agreement—is not within the coverage of the Sherman Act: A labor agreement upon a*



mandatory subject of collective bargaining is outside the scope of the Sherman Act. The agreement is by hypothesis "with respect to wages, hours, and other terms and conditions of employment." NLRA, § 8(d). Regardless of the level of the benefit or protection it is still a labor standard that is fixed. The standard is not distinguishable for anti-trust purposes by its content; it is all the same whether the wage is high or low, or the hours short or long, or the work allocated to the unit wide or narrow. And the Government grants that the anticompetitive consequences of the labor standard, either in purpose or effect, are irrelevant. As neither the content nor consequence of the labor standard makes a difference, there is nothing left. Of no agreement which is subject to inquiry under the Sherman Act would it be possible to say that its terms and intentional or inherent effect are irrelevant. On the contrary, "such contracts and combinations are within the act as, by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade." *Appalachian Coals v. United States*, 288 U.S. 344, 360. When the minimum criteria relevant to a Sherman Act inquiry are not germane, the candid conclusion which is required is that "Every contract . . . in restraint of trade" does not include an agreement "with respect to wages, hours, and other terms and conditions of employment."

In the seventh decade of the Sherman Act, 75 years after its enactment, it is nevertheless for the first time seriously suggested in this Court that the labor standard itself—the level at which the benefit or protection is fixed—can be adjudged an instrument of an antitrust restraint. *Pennington* forcefully presents the point. Compensation for work is at the innermost core of mandatory bargaining. Yet central to the alleged conspiracy in *Pennington* is the claim that the hourly wage rate and the contribution to the Welfare Fund were set at a level designed to eliminate

the competition of the smaller companies by making the labor cost too high for them to pay. To say that the conspirators' anticompetitive intent entered into the determination of the wage scale and placed it higher than it would otherwise be requires a judgment by a court or jury that a lower rate would have been agreed upon as a fair return for work had the labor and management negotiators bargained free of anticompetitive design. The judgment called for is an impossibility. In *Pennington*, absent the alleged conspiracy, would the wage rate and royalty contribution have been lower? Should it have been lower? If *Pennington* were an equity action for injunctive relief, what would be the appropriate remedy to reach the labor cost which is at the heart of the alleged antitrust violation? A judicial determination of the wage rate? A judicial nullification of the existing rate with a direction to negotiate a lower one? A judicial maintenance of the *status quo* pending fulfillment of the same direction? And if *Pennington* were a criminal action, should men be jailed or fined for the compensation for labor that they have negotiated?

The Government does not avoid the difficulty by its suggestion that "a critical inquiry in the *Pennington* case would seem to be whether the verdict is or is not supported by evidence, *independent of the agreement and its economic consequences*, showing that the union was coming to the aid of a conspiracy of employers or seeking to advance its business investment rather than the interests of its members in the increased compensation" (Govt. br. pp. 36-37, emphasis supplied). The dichotomy is artificial on its face. Try to imagine on any evidence a sensible judgment that in agreeing to a higher wage the union was indifferent to "the interests of its members in the increased compensation." The most that could be said on any evidence is that the union had a double motive. Is the result then to turn on the union's dominant motive, or is the wage rate to be found legal because a valid motive contributed to its determination, or is it to be found illegal

because an invalid motive was part of the whole? "Neither the test of 'object' nor 'necessary effect' gives a satisfactory answer to the question. Even if his dominant motive was . . . [to increase compensation], John L. Lewis would not be blind to the other consequences or leave them out of his calculations. Were they therefore 'an object' of the combination? If not, were they a 'necessary effect'?" Cox, *Labor And The Antitrust Laws—A Preliminary Analysis*, 104 U. Pa. L. Rev. 252, 282 (1955). As the Government states, "Juries should not be allowed to speculate about why a union bargained for increased compensation" (Govt. br. p. 36).

Furthermore, it is highly unrealistic to formulate an inquiry in terms of evidence "independent of the agreement and its economic consequences . . ." The agreement has to be admitted into evidence. The independent evidence would not be intelligible without it, particularly if the claim were made that the agreement was the culmination of an antitrust plot. Nor could the economic consequences of the agreement be disregarded. It would be perverse to say that the probative value of the independent evidence, pro and con, should not be weighed in the light of the intrinsic character of the agreement, either to fortify or neutralize the inferences that the independent evidence permits. As in *Pennington*, the very fact that the agreement is one for compensation for labor goes very far (in our view all the way) to destroy the claim that it is an antitrust artifice. And, as in *Jewel*, the unions will in defense adduce the evidence of origin, history, economic context, reason for being, and the details of the negotiation of the challenged provision in order to demonstrate that it is free of anticompetitive content in the antitrust sense. In the end, one way or another, the entire panoply of economic fact becomes relevant, and judges and juries are of necessity "allowed to speculate about why a union bargained for increased compensation" (Govt. br. p. 36), or any other labor standard within the scope of mandatory bargaining.

The risk is purposeless. Once the fact of agreement and its economic consequences are recognized as irrelevant, what is left is not worth agonizing over. For, whatever the myriad of influences that enter into its determination, it is still a labor standard within the scope of mandatory bargaining which is fixed, and therefore by definition the subject of agreement is "with respect to wages, hours, and other terms and conditions of employment." Whether a contested subject is within or without this class is a preliminary, separate and fundamental threshold question whose determination belongs to the National Labor Relations Board. Subsumed within that determination will be a judgment resolving the interplay of reasons for committing the subject to or excluding it from the domain of "wages, hours, and other terms and conditions of employment." But once determined that it is within this field, it is then outside the purview of the Sherman Act.

We therefore draw the coverage line at mandatory subjects of collective bargaining. That is the same line that this Court drew in *Allen Bradley*. In that case there were "industry-wide understandings, looking not merely to terms and conditions of employment but also to price and market control. Agencies were set up composed of all three groups [the union-contractor-manufacturer combination, 325 U.S. at 807] to boycott recalcitrant local contractors and manufacturers and to bar from the [New York City] area equipment manufactured outside its boundaries." 325 U.S. at 799-800. And "this combination of business men" "intended to and did restrain trade in and monopolize the supply of electrical equipment in the New York City area to the exclusion of equipment manufactured in and shipped from other states, and did also control its price and discriminate between its would-be customers" (325 U.S. at 800-801). Exclusion from the market and price control were thus at the center of the scheme. Such trade restraints are not mandatory subjects of collective bargaining. While we share the Government's apprehension concerning premature generalization of the compass of



obligatory negotiation,<sup>2</sup> we have no hesitancy in saying that a subject is not within that scope when its sole relationship to "wages, hours, and other terms or conditions of employment" is that diminution in competition by predatorily restraining trade will make the company more prosperous and thus enable it to pay better wages and provide more work. That was the sole relationship in *Allen Bradley*. And that does not suffice to exclude a subject from the coverage of the Sherman Act. But *Allen Bradley* does not suggest, and it is a distinct extension of its holding to contend, that increasing wages or shortening hours or otherwise fixing labor standards can be brought within antitrust proscription upon a showing that the improvement was the product of union abetment of a businessmen's conspiracy to diminish competition, an inquiry itself highly unrealistic when directed to the reason for adopting a labor standard.<sup>3</sup>

<sup>2</sup> In *N.L.R.B. v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 45, this Court indicated that the exclusive bargaining authority of a union is not to be taken "as precluding such individual contracts as the Company might elect to make directly with individual employees." That dictum had to yield. *J. I. Case Co. v. N.L.R.B.*, 321 U.S. 332. In the latter case, this Court indicated that matters "not necessarily included within the statutory scope of collective bargaining" include such subjects "as stock purchase, group insurance, hospitalization, or medical attention" (*id.* at 339). And that dictum had to yield. *Inland Steel Co. v. N.L.R.B.*, 174 F.2d 875 (C.A. 7), cert. denied on this point, 336 U.S. 960; *W.W. Cross and Co. v. N.L.R.B.*, 174 F.2d 875 (C.A. 1); *Richfield Oil Corp. v. N.L.R.B.*, 231 F.2d 717 (C.A.D.C.), cert. denied, 351 U.S. 909.

<sup>3</sup> In its brief (p. 34), the Government suggests that this Court regarded the situation in *Allen Bradley* as one in which "the employer's conspiracy originated from a union proposal." Jewel takes this position more directly (Res. br. p. 42). This is not accurate. Cox, *Labor And The Antitrust Laws—A Preliminary Analysis*, 104 U. Pa. L. Rev. 252, 270-271 and n. 90 (1955). It attributes to the majority of the Court a view of the facts taken by the minority and by the courts below but not by the majority.

Unlike the Government (br. pp. 34-35), while we agree with it that *Philadelphia Record Co. v. Manufacturing Photo-Engravers*



The Government balks at the conclusion primarily because the words "terms or conditions of employment" appear identically in § 8(d) of the National Labor Relations Act defining mandatory subjects of collective bargaining and in § 13(c) of the Norris-LaGuardia Act defining a "labor dispute"; it states that what constitutes a term or condition of employment under one section is equally so under the other; it fears that by reading "terms or conditions of employment" too expansively too much will be swept under antitrust immunity via the definition of a "labor dispute," and that by reading the phrase too restrictively too much will be excluded from the scope of mandatory bargaining under § 8(d); it therefore resolves its dilemma by enlarging the field of Sherman Act coverage to include mandatory matters of collective bargaining which

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*Assn. of Philadelphia*, 155 F.2d 799 (C.A. 3), was correctly decided, we do not read the case as an instance of antitrust application to an agreement upon a mandatory subject of collective bargaining. It presented a situation of bare union direction to the men to refuse to work for a particular employer on commercial photo-engraving at night, although the same men were at the same time for the same employer at work at night on newspaper photo-engraving, the refusal to work constituting naked union abetment of a businessmen's scheme to eliminate that particular employer as a competitor in the commercial photo-engraving field. There was no objection to night work as such; there was no objection to work load, the men doing the commercial photo-engraving in the "slack periods" when there was no newspaper photo-engraving for them to do (*id.* at 801); there was no "grievance or dispute . . . as to labor or working conditions" (*ibid.*); indeed, it does not appear that the union was acting in its self-interest to further the working welfare of the employees either directly or indirectly in any way. The only union activity was the refusal to work, and in the circumstances its occurrence at night is as irrelevant as it would be had it taken place during the day. Nocturnal refusals-to-work do not stand on a higher level than daylight strikes. It is doubtful that the union was even acting "in its self-interest" (*United States v. Hutcheson*, 312 U.S. 219, 232), and it is certain that it was not acting to regulate "wages, hours, and other terms and conditions of employment."

are made subject to antitrust prohibition within the limitations of the *Allen Bradley* qualification of labor immunity. (Govt. br. pp. 18-22, 50-53.)

The dilemma is unreal. While the phrase "terms or conditions of employment" covers the same subjects under § 8(d) and § 13(c), the function and legal consequence of embracing a subject within this phrase is very different under each section. Every controversy over a mandatory subject of collective bargaining is a labor dispute, but not every matter within the compass of a labor dispute constitutes a mandatory subject of collective bargaining. The point is explicit in *Allen Bradley*. The union's aim in *Allen Bradley* was "to expand its membership, to obtain shorter hours and increased wages, and to enlarge employment opportunities for its members" (325 U.S. at 799). It was promotion of this aim which gave the controversy its statutory character as a labor dispute. Said the Court (325 U.S. at 807, n. 12):

It has been argued that no labor dispute existed. The argument is untenable. . . . Local No. 3 is a labor union and its spur to action related to wages and working conditions.

Part of the means used by the union to further its aim was union abetment of market monopoly and price control by a businessmen's combination. This brought these trade restraints within the scope of the labor dispute. But to bring them within the scope of a labor dispute does not bring them within the scope of mandatory bargaining. For the inclusion of the trade restraints within the ambit of the labor dispute results, not from the fact that they constitute in themselves "terms or conditions of employment," but from the fact that they are elements of a "controversy concerning terms or conditions of employment." That market monopoly and price control are part of the controversy creates in itself no duty to bargain about them.

The functional difference between the definition of a labor dispute in § 13(c) and the duty to bargain enjoined by § 8(d) is crucial to an understanding of the correct reach of each. For example, a work stoppage in violation of a no-strike agreement over a grievance open to adjustment under the arbitral machinery of the collective bargaining agreement is not enjoined in a federal district court because it involves a labor dispute. *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195. This is in keeping with the purpose of Congress to withdraw the federal courts from intervention in labor disputes. Nevertheless, while the strike is not enjoined because it involves a "controversy concerning terms or conditions of employment," the employer is under no duty to bargain about the grievance during the period of the strike even though "terms or conditions of employment" are the essence of the grievance. "As the contract provided for a detailed procedure of adjusting grievances, the . . . [employer] could lawfully refuse to process the grievance . . . while the strike was in progress." *Charles E. Reed Co.*, 76 NLRB 548, 550. For "the stability of labor relations that the statute seeks to accomplish by the encouragement of the collective bargaining process ultimately depends upon the channelization of the collective bargaining relationship within the framework of a collective bargaining agreement, and the adherence thereto by the contracting parties." *United Elastic Corp.*, 84 NLRB 768, 773.<sup>4</sup> Suspension of the duty to bargain about the grievance until the strike is terminated is in keeping with the institutional demand that collective bargaining itself exerts. Accordingly, based on the difference in statutory function, the identical dispute evokes different legal consequences.

The Government is therefore quite mistaken when it equates the scope of mandatory bargaining with the scope

<sup>4</sup> See also, *Higgins, Inc.*, 90 NLRB 184; *UE, Local 1113 v. N.L.R.B.*, 223 F.2d 338, 344 (C.A.D.C.), affirming, 106 NLRB 1171, 1180.

of a labor dispute. There is thus no reason to fear that the sweep of a labor dispute would determine the subject matter of mandatory bargaining. The desiderata of collective bargaining under the National Labor Relations Act control that question. The duty to bargain which that determination channels, and the agreement which is the consummation of the fulfillment of that duty, is "with respect to wages, hours, and other terms and conditions of employment." That field is not within the purview of the Sherman Act. This does not claim or result in "complete immunity" (Govt. br. p. 17), "automatic exemption" (*id.* at 24), "total labor exemption" (*id.* at 53), or "complete exemption" (*id.* at 71). *Allen Bradley* marks the limit of labor immunity. It applies to labor activity outside the scope of mandatory bargaining. To bring *Allen Bradley* into the field of mandatory bargaining does not maintain the *status quo*; it enlarges the area of antitrust application.

4. *A class 3 agreement consummated as a result of arm's length bargaining is exempt from the Sherman Act:* To pretermitt this question, as the Government would, is to pretermitt the continuing vitality of *Allen Bradley*. For the validity of a class 3 agreement arrived at by arm's length bargaining is inherent in *Allen Bradley*. The holding in that case means, as this Court said, "that the same labor union activities may or may not be in violation of the Act, dependent upon whether the union acts alone or in combination with business groups" (325 U.S. at 810). The conduct "is not illegal by reason of the union's war aims but only because of its choice of allies."<sup>5</sup> A union joins with no one when vis-a-vis the employer group it bargains independently and adversely and reaches an agreement in consummation of that activity. It would be a total absurdity to say that the union may wage war but not make peace.

<sup>5</sup> Dodd, *The Supreme Court And Organized Labor, 1941-45*, 58 Harv L. Rev. 1018, 1051.

A step-by-step analysis confirms the conclusion. As has been said, there is in *Allen Bradley* "no intimation that the Court might permit '... antitrust prohibition of an agreement between one union and one employer requiring conduct whose object is some direct market restraint.' In such a case there is no illicit combination of business firms to aid or abet." Cox, *Labor And The Antitrust Laws—A Preliminary Analysis*, 104 U. Pa. L. Rev. 252, 271 (1955). The second step is also clear (*ibid.*):

Nor is there reason to doubt the soundness of the majority's assumption that a union does not violate the antitrust laws by negotiating parallel restrictive agreements with competing business firms. In this situation, there may be sufficient evidence of combination among the employers if each knows the others' actions, but the law could not tolerate the paradox of sanctioning strikes for uniform agreements while proscribing them as treaties of peace.

This takes care of single-employer and pattern bargaining and leaves only multi-employer bargaining for which to account. As to the latter, it has been said, "An association of employers which bargains as a unit ought to have the same privilege of surrendering to union demands as a series of individual firms, yet such an arrangement plainly does involve a combination of business firms." Cox, *supra*, at 271. The "yet" is pointless. For to show a combination of business firms plainly does not show union alliance with that combination. And that is the crucial thing. The simple clear fact is that multi-employer bargaining conducted at arm's length does not constitute union abetment of a business combination. It is indeed a self-defensive form of employer bargaining designed to match union strength. *N.L.R.B. v. Truck Drivers Local Union No. 449*, 353 U.S. 87. If the agreements which eventuate from single-employer and pattern bargaining are immune, it compounds absurdities to withdraw immunity from an agreement which eventuates from multi-employer



bargaining, itself a legal and beneficial form of negotiation. Illegality cannot sensibly result from mere recourse to it. For example, in steel, until 1956 separate negotiations were conducted with each of the individual employers; since 1956, bargaining with respect to the basic economic issues has been conducted with a four-man coordinating committee representing the eleven major steel companies. The immune agreement which resulted from pattern bargaining before 1956 surely did not become a vulnerable agreement after 1956 because of the institution of joint negotiations. Agreements which emerge from pattern bargaining have no lesser economic impact, if that is relevant, than agreements which emerge from multi-employer bargaining. And so, once granted the immunity of agreements which result from single-employer and pattern bargaining, the immunity of those which result from multi-employer bargaining exists as a matter of course.

The Government's position is internally inconsistent. With respect to class 1 and 2 contracts it grants that the agreement standing alone is immune, and it would require independent evidence of union abetment of a business conspiracy to invalidate it. As it states, it cannot "be seriously argued that multi-employer bargaining introduces an illegal element or is otherwise opposed to the national labor policy" (Govt. br. p. 32). But if multi-employer bargaining does not establish union alliance with employer groups in class 1 and 2 contracts, neither does it establish alliance in class 3 contracts. The only difference among the classes is the content of the agreement itself. The premise of *Allen Bradley* is that "the same labor union activities may or may not be in violation of the Sherman Act, dependent upon whether the unions act alone or in combination with business groups" (325 U.S. at 810). The means used, not the end attained, is the test of illegality. The content of the agreement is therefore irrelevant.

This brings us to the true thrust of the Government's reservation. It frankly avows that the "eclectic approach

we advocate goes directly to Section 1, as Mr. Justice Stone did in the *Apex* case, and asks how its words and policy apply to the particular kind of contract involved when read in the light of the national policy expressed in labor legislation" (Govt. br. p. 52). Contrary to *Allen Bradley* the content of the agreement thus becomes relevant. The Government would then ask whether a class 3 agreement should be exorcised as an antitrust instrument if on balance the direct restriction on commercial competition it exerts is judged to be without sufficient redeeming labor value. It pretermits this question.

The law as it now exists allows no room for the Government's reservation. The Government would return to *Apex Hosiery Co. v. Leader*, 310 U.S. 469, as the fountain-head of the application of the antitrust laws to labor activity (Govt. br. pp. 28-29, 30, 38-39, 52, 56-57). But, except for the notable proposition that the elimination of differences in labor standards as an element of price competition is not prohibited\* (310 U.S. at 503-504 and n. 24), history has left *Apex* behind. At issue in *Apex* was the legality under the antitrust laws of a violent sit-down strike to support a minority union demand for a closed shop agreement (*id.* at 481-482). The exact holding in *Apex* was that in the circumstances of that case the local strike to enforce a union demand did not result in the kind of restraint of commercial competition at which section 1 of the Sherman Act was aimed. Nevertheless, *Apex* warned, not all local strikes were outside the prohibition of the Sherman Act, but only those which were not intended to have, or did in fact have, anticompetitive market effects (*id.* at 512-513, 508-512). Thus, there was no disapproval of the view that if the purpose of a primary organizational strike was to stop the production of nonunion coal in order to prevent its shipment to a market where it would compete with

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\* The NLRA states in terms that an evil at which the statute is aimed is "preventing the stabilization of competitive wage rates and working conditions within and between industries." § 1, ¶ 2.

union-produced coal, the strike would be illegal (*id.* at 511-512). For the same reason secondary boycotts violated the Sherman Act (*id.* at 505-508), in that "the restraint operated to suppress competition in the market" (*id.* at 508); whether the self-interest of the union in strengthening its bargaining position, not considered sufficient justification before *Apex*, should be deemed to be enough vindication to permit the activity was passed over (*id.* at 506-508 and n. 25). The apparent essence of *Apex* was to judge the justifiability of labor activity by its intended or likely effect on commercial competition. It has been remarked that *Apex* "contains inconsistencies that emphasize" its "ambiguity" (Cox, *Labor And The Antitrust Laws—A Preliminary Analysis*, 104 U. Pa. L. Rev. 252, 264 (1955)), and that whatever line it drew "distinguishing the legal from the illegal was an invitation to wholesale unprincipled judgments" (Winter, *Collective Bargaining And Competition: The Application Of Antitrust Standards To Union Activities*, 73 Yale L. J. 14, 41 (1963).)

Without of course disturbing the obvious permissibility of eliminating labor standards as a competitive element, this Court cut through and went beyond the *Apex* approach in *United States v. Hutcheson*, 312 U.S. 219. Inquiry into labor activity under the antitrust laws ends with the determination that the "union acts in its self-interest and does not combine with non-labor groups . . ." (*id.* at 232). The "practical consequence was to make the Sherman Act inapplicable to all combinations of employees regardless of the objective"; "In the absence of fraud or violence, the *Hutcheson* case immunized any restraint of trade imposed by a labor union." Cox, *supra*, at 265. The "*Hutcheson* case drew an end to the application of the Sherman Act to labor unions except when they joined in conspiracy with non-labor groups." Cox and Bok, *Labor Law, Cases and Materials*, 863 (5th ed. 1962). The departure from *Apex* is emphasized by the concurring opinion of Chief Justice Stone who wrote for the majority in *Apex*. He would have validated the jurisdictional strike in *Hutcheson* be-

cause it exerted no restraint on commerce different from any local strike (*id.* at 239-241), adding that "In any case there is no allegation in the indictment that the restraint did or could operate to suppress competition in the market of any product and so dismissal of these counts is required by our decision in *Apex* ..." (*id.* at 241-242). *Allen Bradley* thereafter reaffirmed *Hutcheson* by its emphasis that union abetment of an independent conspiracy of business men was essential to deprive labor activity of its antitrust immunity. And Congress has voted down bills seeking to remove the labor exemption (Pet. br. p. 83, n. 16).<sup>7</sup>

It is too late "to turn the clock back to the day of the *Apex* case" (Cox, *supra*, at 263);<sup>8</sup> to relegate *Hutcheson* to endorsement of the self-evident proposition that the Sherman Act does not forbid the formation or operation of unions (Govt. br. p. 56); and to turn *Allen Bradley* into the absurdity that a union may not enter into an agreement for which it is free to bargain and strike.<sup>9</sup>

<sup>7</sup> The Government acknowledges that there is no empiric evidence that the class 3 agreement is significant either in frequency or effect (Govt. br. pp. 54-55). An attempt to make a showing of an actual problem is usually a compound of declamation, horrors drawn from newspaper stories, and acceptance at face value of allegations of complaints. Despite the tumult the *Allen Bradley* situation happens to be quite atypical.

<sup>8</sup> A distinguished casebook neither reproduces nor abstracts *Apex*, noting merely that *Hutcheson* ended the development of the *Apex* doctrine. Cox and Bok, *Labor Law, Cases and Materials*, 109 (5th ed. 1962).

<sup>9</sup> The extent to which the Government would sweep the chessmen off the board is further indicated by its extraordinary statement that regulation of selling time is a "naked elimination of competition," by its bewildering doubt that *Board of Trade v. United States*, 246 U.S. 231, "remains good law," and by its mutilating assertion that *Board of Trade* "must be limited to its peculiar facts involving the unique problems of a commodity exchange" (Govt. br. p. 47)! See petition for writ of certiorari, pp. 33-37. See also,

5. *In summation*: The decisions below in *Pennington* and *Jewel* furnish fresh contemporary evidence of the unhappy history of the application of the antitrust laws to labor activity. Each amply attests the continuing reality of the danger of judicial interference in collective bargaining via the antitrust route. In this area "courts have neither the aptitude nor the criteria for reaching sound decisions." Cox, *supra*, at 269-270.

We can speak with confidence of the situation in *Jewel*. The antitrust action was instituted as a maneuver to secure through litigation what Jewel could not obtain at the bargaining table. Jewel without deviation had entered into agreements containing the limitation upon marketing hours since it began operating meat departments in Chicago in 1933 or 1934 (Pet. br. pp. 15-16). It entered into the 1957 negotiations with a full and unbroken history of participation in the limitation. And while in the 1957 negotiations it publicly proclaimed its belief that the limitation was invalid, it would nevertheless have been perfectly content with a modification that would have permitted one night of operation on Friday, leaving the limitation otherwise totally intact. Thus, it either proposed on behalf of itself (Pet. br. pp. 21, 24, 31), or joined with other employers in proposing (Pet. br. pp. 22, 27-28, 30), Friday night operation. Hence, despite its professed belief that the limitation was illegal, it was nevertheless completely willing to go along with it, provided only that it was modified to its satisfaction. Jewel was not offended

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for the allocation of selling time of tobacco among warehousemen, *Rogers v. Tobacco Board of Trade*, 244 F.2d 471 (C.A. 5); *Asheville Tobacco Board of Trade v. F.T.C.*, 263 F.2d 502 (C.A. 4); *Danville Tobacco Assn. v. Bryant-Buckner Associates*, 333 F.2d 202 (C.A. 4). "Competition is not an absolute. Every restraint of trade is not a violation of the antitrust laws; the decisive question is whether it is an unreasonable restraint, and this depends on the significance of the restraint in relation to the particular market under investigation." *Asheville Tobacco Board of Trade v. F.T.C.*, 263 F.2d 502, 511 (C.A. 4).



by the claimed illegality or averse to participating in an agreement perpetuating it almost in whole; it simply used the claim of illegality and the threat of a law suit to induce accession to its bargaining demand. Thus, on October 22, 1957, Jewel stated that: "We would much prefer to negotiate for *one or more* nights of operation and would abide by the results of such negotiations if they were satisfactory to us. But, if they are not, we felt impelled to litigate the matter even though our successful outcome of such litigation would inevitably mean that the market operations would automatically be opened to seven days a week, twenty-four hours per day, of operation" (Pet. br. p. 25). And, on November 22, 1957, in proposing Friday night operation and asking R. Emmett Kelly, the union's chief spokesman, to submit it to the members, Jewel wrote that "If the contract provision prescribing the hours of market operating is not relaxed so as to permit *at least one night of operation* to 9:00 p.m. in all areas, then the company intends to litigate the legality of this contract restriction" (Pet. br. p. 31). But it would not have litigated even total retention of the limitation upon market operating hours if it could obtain agreement upon female wrappers. For, after first asking R. Emmett Kelly to submit to the members Jewel's proposal of November 22, 1957 which included provision for Friday night operation *and* female wrappers (Pet. br. p. 31), Jewel then requested that, if the members rejected that proposal, the same proposal should be submitted but this time with Friday night operation *deleted* and female wrappers *retained*. (Pet. br. 32). Thus Jewel was willing to scrap even one night of operation in favor of agreement on female wrappers.

Jewel's exertion of the pressure of threatened litigation to secure its bargaining demand was avowed. Part of its purpose in securing a legal opinion expressing belief that the limitation was illegal was to use it in negotiations (Pet. br. p. 24). Associated Food Retailers first, then all the employers, and finally the union representa-

tives were read the opinion (Pet. br. pp. 24-25). Jewel "threatened to sue as a co-conspirator any employer who opposed night marketing operations . . ." (R. 666, Pet. br. p. 24). Exposure to a treble-damage judgment is itself coercive. The action began with a complaint which sought \$25,000 trebled (R. 26-27); at trial the complaint was amended to \$17,000,000 trebled (R. 78, Tr. 410); after trial the claim was reduced to \$50,000 trebled; as a condition to the grant of a stay pending certiorari a bond in the sum of \$500,000 was sought; and the Court of Appeals conditioned the stay upon securing a bond for \$75,000. It is not comfortable to have to respond to questions of union officials, men of modest means with their own home as their main possession, that they risk a personal judgment for damages against them,<sup>10</sup> and it is not comforting to assure them that probably the unions' treasuries will be adequate to satisfy any judgment. To bargain in the face of an actual or threatened antitrust action is, as the unions' chief spokesman told the members at a contract ratification meeting, "negotiating with a gun in your back" (Pet. br. p. 32). A less resolute union group would have broken.

The reality of the danger of interference with collective bargaining is therefore very great, not only because of the risk of erroneous jury verdicts and judicial judgments, but also because of the vexation of the bargaining process and the yielding of bargaining positions which may result from the threatened or actual antitrust action regardless of its probable ultimate outcome.<sup>11</sup> And enlarged application of

<sup>10</sup> See *Atkinson v. Sinclair Refining Co.*, 370 U.S. 238, 247-249.

<sup>11</sup> There is not much relief in the suggestion that "collective bargaining is now highly sophisticated" and "lawyers and economists" regularly participate in solving more complex problems (Govt. br. p. 59). Professional aides cannot do much to cushion the coercion of threatened or actual lawsuits. And a good deal if not most of collective bargaining is in any event still carried on

the antitrust laws to labor activity serves no compensating good. For the labor issues which have agitated the antitrust laws in the past have all since been directly dealt with by Congress in labor legislation as labor problems. Congress has curbed the secondary boycott<sup>12</sup> in § 8(b)(4)(B) of the NLRA, preserving from condemnation that manifestation of secondary influence deemed legitimate (*N.L.R.B. v. Fruit and Vegetable Packers*, 377 U.S. 58; *N.L.R.B. v. Servette, Inc.*, 377 U.S. 46), and expressly noting that elimination of the secondary boycott made effectuation of an *Allen Bradley* violation impossible and therefore rendered amendment of the antitrust laws unnecessary (S. Rep. No. 105, 80th Cong., 1st Sess., 22; H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 65; in 1 Leg. Hist. LMRA 428, 569). The jurisdictional strike<sup>13</sup> is regulated by § 8(b)(4)(D) in conjunction with § 10(k) of the NLRA (*N.L.R.B. v. Radio and Television Broadcast Engineers Union, Local 1212*, 364 U.S. 573). So-called featherbedding<sup>14</sup>—standby and make-work practices—has been regulated to the limited extent that Congress wishes to reach it by the Lea Act in broadcasting (*United States v. Petrillo*, 332 U.S. 1), by the Hobbs Act (*United States*

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without professional aides. The problem is not one to which professional expertness is relevant, although the "subtle accommodations" which the Government invites would indeed contribute independent interfering perplexities. A requirement of "subtlety" is inherently inhibitory, for it is the exceptional professional aide who will encourage innovation rather than warn against its risks.

<sup>12</sup> As an antitrust issue or implement, see *Allen Bradley Co. v. Local Union No. 3, IBEW*, 325 U.S. 797; *Loewe v. Lawlor*, 208 U.S. 274; *Duplex Printing Press Co. v. Deering*, 254 U.S. 443; *Bedford Cut Stone Co. v. Journeymen Stonecutters*, 274 U.S. 37.

<sup>13</sup> As an antitrust issue, see *United States v. Hutcheson*, 312 U.S. 219.

<sup>14</sup> As an antitrust issue, see *United States v. Hod Carriers*, 313 U.S. 539, affirming, 37 F. Supp. 191 (N.D. Ill.); *United States v. American Federation of Musicians*, 318 U.S. 714, affirming, 47 F. Supp. 302 (N.D. Ill.).

v. *Green*, 350 U.S. 415), and by § 8(b)(6) of the NLRA (*A.N.P.A. v. N.L.R.B.*, 345 U.S. 100; *N.L.R.B. v. Gamble Enterprises*, 345 U.S. 117). Strikes and cognate pressure by minority unions for organization or recognition<sup>15</sup> are controlled by §§ 8(b)(4)(C) and 8(b)(7) of the NLRA (*N.L.R.B. v. Drivers Local Union No. 639*, 362 U.S. 274). Contracting-out of work,<sup>16</sup> confirmed as a mandatory bargaining subject at its inner core (*Fibreboard Paper Products Corp. v. N.L.R.B.*, No. 14, October Term 1964), has the legal limits of its contractual control demarcated by § 8(e) of the NLRA. Apart from an enlarged area of activity permissible in the building and clothing industries by reason of the provisos to § 8(e), a union may secure contractual commitment of defined work exclusively to the employees in the unit it represents, and may limit the allowable subcontracting of that work to persons who maintain commensurate labor standards, but may go no further. *Meat and Highway Drivers Local Union No. 710 v. N.L.R.B.*, 335 F.2d 709 (C.A.D.C.). And primary strikes<sup>17</sup> have been resoundingly safeguarded as protected activity by § 7 of the NLRA regardless of their economic proliferation (*Division 1287, Amalgamated Association v. Missouri*, 374 U.S. 74), with Congress limiting the scope of containment and illegalization to specifically defined situations and particularized objectives (*Amalgamated Association v. W.E.R.B.*, 340 U.S. 383, 389-390).

<sup>15</sup> As antitrust issues, see *United States v. Building and Construction Trades Council*, 313 U.S. 539; *United States v. United Brotherhood of Carpenters*, 313 U.S. 539.

<sup>16</sup> As an antitrust issue, see *Pennington v. U.M.W.*, 325 F.2d 804, 7813 (C.A. 6), cert. granted, 377 U.S. 929.

<sup>17</sup> As antitrust issues, see *Apex Hosiery Co. v. Leader*, 310 U.S. 469; *Coronado Cases*, 259 U.S. 344, 268 U.S. 310; *United Leather Workers International Union v. Herkert & Meisel Trunk Co.*, 265 U.S. 457.

Thus, the route that Congress has travelled is to treat labor activity, not under the general umbrella of the antitrust laws, but as particularized labor problems to be dealt with as such by the labor laws. It therefore but respects the will of Congress to contain the antitrust laws as applied to labor activity within the compass that *Allen Bradley* marks. This means that the antitrust laws have no application within the area of mandatory bargaining, and without that area apply only to actual union abetment of an independent conspiracy of businessmen. Each avenue of this approach is separately essential in the litigation of a labor antitrust case. Deferring for the moment the question of exclusive primary jurisdiction, the judicial proceeding can be shortened and sharpened whenever, as the proof develops either at trial or pretrial, it appears that the challenged agreement is either upon a mandatory subject of bargaining, or, whatever its subject, it was reached as a result of arm's length bargaining. As in this case, when the District Court dismissed the complaint against Associated Food Retailers at the close of Jewel's case for lack of evidence of conspiracy, it should not have been possible to continue the trial against the unions on the view that "plaintiff sought relief from the defendant unions apart from the theory of conspiracy . . ." (R. 662, 684).

At all events, to analyze the issues in terms of classes of agreements and categories of qualifications, with accompanying subrefinements and reservations, is unmanageably diffuse and invites decision by inclination. It would loose a powerful retrogressive impetus not soon contained.

## II. REPLY TO THE GOVERNMENT'S POSITION ON EXCLUSIVE PRIMARY JURISDICTION

Under both petitioners' and the Government's view, it is crucially relevant to ascertain whether the contested agreement is upon a mandatory subject of collective bargaining. The Government nevertheless takes the position that exclusive primary jurisdiction to decide this



question does not reside with the National Labor Relations Board. In supporting this position the Government treats with every case but the one presently before the Court.

1. On the face of its complaint Jewel spells out either protected or prohibited activity under the terms of the National Labor Relations Act on the unions' part. The complaint in so many words alleges that the unions "have insisted" upon the inclusion of the limitation upon market operating hours in their labor agreements (R. 24, ¶ 19). If that limitation is a nonmandatory bargaining subject, insistence upon it is a classic refusal-to-bargain; if that limitation is a mandatory bargaining subject, insistence upon it is classic protected activity. The complaint thus places the controversy squarely within the NLRB's ambit. And even at the pleading stage the face of the complaint does not exhaust the considerations relevant to invocation of primary jurisdiction. As this Court has explained (*United States Navigation Co. v. Cunard S.S. Co.*, 284 U.S. 474, 487):

In the first place, while the allegations of the bill must be taken as true upon the motion to dismiss, they still are subject to challenge by pleading and proof if the motion be denied. We cannot assume that, in a proceeding before the board in which the whole case would be open, similar allegations will not be denied or met by countervailing affirmative averments. . . . And whatever may be the form of the agreement, and whether it be lawful or unlawful upon its face, Congress undoubtedly intended that the board should possess the authority primarily to hear and adjudge the matter.

On the face of the complaint and the foreseeable scope of its litigation, therefore, the controversy was within the conventional reach of the NLRB's jurisdiction. With respect to a state action to enjoin a violation of a state restraint-of-trade statute, this Court ruled that "where

the moving party itself alleges unfair labor practices, where the facts reasonably bring the controversy within the sections prohibiting these practices, and where the conduct, if not prohibited by the federal Act, may be reasonably deemed to come within the protection afforded by that Act, the state court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance." *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468, 481. Since this is true of a state action to enforce a state antitrust law, the question simply is why the same is not true of a federal action to enforce a federal antitrust law.

2. The Government asserts that a suitable procedure for securing an administrative determination is unavailable. It urges, first, that the NLRB General Counsel "could have refused to issue a complaint and thus terminated any administrative proceeding at the outset" (Govt. br. p. 75).

Bypassing the administrative proceeding is not justified by the abstract anticipation that the General Counsel might not act even if his power to proceed were invoked. It would be one thing to say that, having sought but failed to secure action by him, the requirement of prior administrative recourse has been satisfied. It is quite another thing to say, without any attempt to secure action by him, that prior resort is unnecessary because it might prove fruitless. Satisfying the General Counsel that he should act is surely not so futile a quest that even the attempt to set the statute in motion may be dispensed with altogether.

A claim based on possible inaction, where no action has been sought, is therefore clearly premature. More fundamentally, the possibility that the General Counsel might not issue a complaint, described by this Court as part of a "narrow area" of the regulatory scheme, did not deter this Court from concluding that state action was preempted. Treated as peripheral rather than central, the

Court noted that (*San Diego Building Trades Council v. Garmou*, 359 U.S. 236, 245-246):

... the Board may also fail to determine the status of the disputed conduct by declining to assert jurisdiction, or by refusal of the General Counsel to file a charge [i.e., issue a complaint], or by adopting some other disposition which does not define the nature of the activity with unclouded legal significance. [Emphasis supplied.]

State action is nevertheless preempted even in this "narrow area" because to allow it "involves too great a danger of conflict with national labor policy" (*id.* at 246). The danger to "national labor policy" is not less by reason of the misapplication of the Sherman Act than of state enactments. The risk is identical whether a federal court rather than a state court acts on the hypothesis that a subject is not within the scope of mandatory bargaining when the NLRB might find otherwise.

The Government's emphasis on the possible refusal to issue a complaint, besides expanding the significance of the "narrow area" and overlooking the dislocation of the "national labor policy," also diminishes the stature of the officer who makes the determination. The General Counsel is the prosecutory arm of the NLRB. In him is invested "general supervision over all attorneys employed by the Board . . . and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect to the investigation of charges and issuance of complaints . . . and in respect of the prosecution of such complaints before the Board." NLRA, § 3(d). His role "is a major one. . . . He vindicates the public interest, performing functions previously performed by the Board itself." *Lewis v. N.L.R.B.*, 357 U.S. 10, 15-16. His refusal to issue a complaint on the ground that there is no reasonable cause to believe that a violation has been committed is the responsible and informed determination

of the very officer to whom Congress has entrusted just this decision. It means that the charging party has been unable to establish to the satisfaction of the responsible prosecutory official that there is even a *prima facie* showing of a violation. It is in keeping with the National Labor Relations Act and does not demean the Sherman Act to decline prosecution of an antitrust complaint on an assumption in conflict with that determination. Where the identical issue is critical and common to both the National Labor Relations Act and the Sherman Act, there is no reason to allow the antitrust action to go through the door when the unfair labor practice proceeding is stopped at the threshold.

The Government's stress of the role of the General Counsel particularizes its apparent general position that the doctrine of primary jurisdiction does not apply if the administrative agency is permitted in its discretion rather than required to act on a complaint filed with it (Govt. br. p. 74). This generalization does not stand up. This Court has pointed out the intended similarity of the procedures under the Federal Trade Commission Act and the National Labor Relations Act. *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U.S. 261, 268. As with the NLRB (*ibid.*), the jurisdiction of the FTC is discretionary, not obligatory, and it acts on outside behest only if to do so is in the public interest. *F.T.C. v. Klesner*, 280 U.S. 19. Nevertheless, the Court of Appeals for the Fourth Circuit, as a matter of course, in considering the validity under the antitrust laws of a permanent plan allocating selling time among warehousemen, suspended the District Court's approval of the plan and remanded "the action with directions to the District Court to seek the advice of the Federal Trade Commission upon the validity and administration of the permanent plan." *Danville Tobacco Association v. Bryant-Buckner Association*, 333 F.2d 202, 203, 207, 209 (C.A. 4).

3. In alternative support of its position that a suitable procedure for securing an administrative determination is unavailable, the Government asserts that in "the present case . . . neither the unions' demand for the market-hours clause, nor the execution of the agreement containing it, constituted an unfair labor practice, and there would be no basis in the Labor Act for the Board to pass upon the question whether the clause related to 'terms and conditions of employment'" (Govt. br. p. 78). Inexplicably omitted from this formulation is that the unions insisted upon the clause. Insistence was alleged, amply proved, and found as a fact (R. 672). And insistence upon a nonmandatory subject of bargaining is simply and plainly the unfair labor practice of refusal-to-bargain. The ensuing inclusion of the clause in the agreement as a result of successful insistence does not oust the NLRB of power to determine whether the clause was the subject of mandatory or permissive bargaining, and insistence upon it hence lawful or unlawful, nor does it deprive the NLRB of power to render effective relief if unlawful insistence is found. Inclusion of the clause in the agreement following unlawful insistence was indeed the precise situation in *N.L.R.B. v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342, 344-347, and expressly found by the NLRB to be an irrelevant circumstance, 113 NLRB 1288, 1309, 1326-27. See also, *International Longshoremen's Association*, 118 NLRB 1481, 1482-83, remanded, 277 F.2d 681 (C.A.D.C.). This is but the particularization of the familiar principle that the inclusion of a contested clause in an agreement does not moot the question whether it is the product of unlawful bargaining or other unfair labor practices. *N.L.R.B. v. American National Insurance Co.*, 343 U.S. 395, 396-400 and n. 4; *N.L.R.B. v. Erie Resistor Corp.*, 373 U.S. 221, 222-224, 237, n. 14, order enforced on remand, 328 F.2d 723, 726-727 (C.A. 3).

It is true that to negotiate and reach an agreement upon a permissive subject of bargaining without insistence is



not an unfair labor practice. But that is not this case. Moreover, even in the situation where the element of insistence is lacking, and therefore no unfair labor practice exists, it is by no means clear that there could not and should not be referral to the NLRB for initial determination of the question whether a particular subject is within or without the scope of mandatory bargaining when that issue is critical to the prosecution of an antitrust action. Power exists. Section 5(d) of the Administrative Procedure Act provides that: "The agency is authorized in its sound discretion, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty."<sup>18</sup> When an antitrust action brings into issue the placement of a subject within or without the scope of mandatory bargaining, a dispute is created by the adverse position of the parties on the question and the diverse legal consequences which flow from one or another classification; NLRB determination of the question would surely "remove uncertainty," and, were the NLRB to decide that the controverted subject was within the scope of mandatory bargaining, it might indeed "terminate a controversy." The declaratory order would be subject to judicial review in the same way as an order issued in an unfair labor practice proceeding,<sup>19</sup> so that a definitive disposition of the critical question within the statutory framework of the NLRA would be assured. The NLRB has devised a declaratory procedure by which, whenever "a party to a proceeding before any agency or court of any State or Territory," or the "agency or court" itself, "is in doubt whether the Board would assert jurisdiction on the basis of its current jurisdictional standards," the party, agency, or court

<sup>18</sup> 60 Stat. 239, 5 U.S.C. § 1004(d).

<sup>19</sup> Legislative History, Administrative Procedure Act, S. Doc. No. 248, 79th Cong., 2d Sess., 263, 362; and see *id.* 25, 204, 227, 248, 316. See also, *National Van Lines, Inc. v. United States*, 326 F.2d 362 (C.A. 7).

"may file a petition with the Board for an advisory opinion on whether it would assert jurisdiction on the basis of its current standards." 29 C.F.R. §§.102.98-102.104, 101.39-101.40. There is no reason why a similar procedure should not be available to secure agency determination of a critical substantive issue committed to administrative competence which arises in an antitrust action.<sup>20</sup> The substantial countervailing argument is that, as issuance of a complaint by the General Counsel is the precondition of NLRB adjudication in an unfair labor practice proceeding, it would be inconsistent with the statutory scheme to permit direct access to the NLRB via the declaratory route. But that objection is easily met by providing that the availability of a declaratory proceeding is dependent on a preliminary determination by the General Counsel that the situation is an appropriate one for a declaration. Whatever doubt exists should be resolved in favor of agency competence to act, for "where the problem lies within the purview of the Board, . . . Congress must have intended to give it authority that was ample to deal with the evil at hand." *Pan American Airways v. United States*, 371 U.S. 296, 312.

In any event, the difficulty is present only where insistence upon a contested clause is not part of the union's conduct, and that difficulty is plainly absent in this case. There is no reason to forego agency action where it can be available because there may be other situations where it may not be available.

4. Like the possibility that the General Counsel would not issue a complaint although his power to act was not invoked, and like the preoccupation with the situation where insistence does not appear although it plainly ap-

<sup>20</sup> "That the agency has no power to grant the relief sought is not a reason for refusing to require prior resort to the agency, if the case involves a question within the agency's special competence."  
3 Davis, Admin. Law Treatise, § 19.07, p. 40. (1958).

appears here, the Government adds a third consideration unrelated to this case. It urges that the six-month period of limitations contained in § 10(b) of the NLRA is too short for discovery or investigation of most antitrust violations, so that access to the NLRB would be time-barred before the antitrust action could be begun (Govt. br. pp. 80-81). In this case, however, the claim of antitrust violation was contemporaneous with its alleged occurrence, and nothing prevented prompt recourse to the NLRB except Jewel's disinclination to proceed before it. Furthermore, in this situation, insistence on the union's part is virtually certain in any of the periodic contract negotiations in which any employer chooses to raise the question. The Government thus asserts a limitations question which is non-existent on this record.

Nor is the Government's treatment of its hypothetical limitations question persuasive. An unfair labor practice proceeding can be time-barred without for that reason precluding referral to the NLRB of an issue within its competence which arises in a timely-brought antitrust action. That was this Court's precise holding in the exactly analogous situation in *United States v. Western Pacific Railroad Co.*, 352 U.S. 59, 70-74, where the running of the two-year limitations period on complaints cognizable by the ICC was urged to bar referral by the Court of Claims to the ICC of an issue within that agency's competence which arose in the course of a timely action brought before the Court of Claims. This Court ruled that the ICC period of limitations "does not deal with referral of questions to the Commission incident to judicial proceedings. . . . [Limitations policy is] aimed at lawsuits, not at the consideration of particular issues in lawsuits. . . . We hold . . . that the limitation [on proceedings before the ICC] . . . does not bar a reference to the Interstate Commerce Commission of questions raised by way of defense and within the Commission's primary jurisdiction. . . ." *Id.* at 72, 74. Rather than to pass it over without mention, it

would perhaps be better were the Government to explain why the *Western Pacific* reasoning is inapplicable to its hypothetical question or to pretermitt the question until a case arises in which it is presented.

5. Also foreign to any issue in this case is the Government's claim that in a civil governmental antitrust action prior recourse to the NLRB "would represent a sharp break with the traditional practice before that agency," that in a criminal antitrust action "it certainly cannot be assumed that Congress intended to condition criminal cases upon such an administrative determination," and that "there cannot be a different rule as to the Board's primary jurisdiction depending upon whether the issue arises in a civil or criminal case" (Govt. br. pp. 79-80). It would be enough to say that, were it true that prior recourse would be inappropriate in a governmental antitrust action, it would be very far from showing that it is inappropriate in a private antitrust action. And it is with a private action that we deal. But the premise of the inappropriateness of prior recourse in a governmental antitrust action, civil or criminal, is itself highly dubious.

(a) The Government's claim pertaining to its institution of a civil antitrust action can be given the same short shift that this Court gave it in *Far East Conference v. United States*, 342 U.S. 570. In a civil antitrust action instituted by a private shipper prior recourse to the Federal Maritime Board is required, *United States Navigation Co. v. Cunard S.S. Co.*, 284 U.S. 474, and the same is true where it is the Government that brings the action, *Far East Conference v. United States*, 342 U.S. 570. "The sole distinction between the *Cunard Case* and . . . [*Far East*] is that there a private shipper invoked the Antitrust Acts and here it is the Government. This difference does not touch the factors that determined the *Cunard Case*. The same considerations of administrative expertise apply, whoever initiates the action. The same Antitrust Laws

and the same Shipping Act apply to the same dual-rate system. To the same extent they define the appropriate orbits of action as between court and Maritime Board." *Id.* at 576: And the suggestion that the United States might not be deemed a "person" eligible to file a complaint with the Maritime Board was dismissed as a "debating point," "almost frivolous," over which one "ought not to dally . . ." (*ibid.*).

Accordingly, once determined that recourse to the NLRB is required of a private litigant, identical recourse by the Government follows as a matter of course. It is no break with tradition to require the Government to proceed before an administrative agency, and to add the NLRB to the list is a small wrench.

(b) Since prior recourse to the administrative agency is demonstrably required of the United States in a civil antitrust action brought by it, and since the Government seems to claim that the same is not true in a criminal action, it has itself shown that the two types can diverge from one another upon the question of the applicability of the doctrine of primary jurisdiction. Obviously they can. The question is whether they should.

It has been suggested that the rationale of *Far East* undercuts the result in earlier cases in which primary jurisdiction was not applied in a criminal antitrust action. 3 Davis, *Admin. Law Treatise*, § 19.06, p. 35 (1958). One District Court has so held. "All the arguments in favor of letting an experienced administrative board exercise its primary jurisdiction applies with equal force in a criminal case as in a civil case. The rationale applicable to the two types of action is the same." *United States v. Alaska S.S. Co.*, 110 F. Supp. 104, 111 (W.D. Wash.). The need for expertness and uniformity is not less because the Government seeks to fine or jail a man rather than to enjoin him. *Cf., United States v. Hutcheson*, 312 U.S. 219, 234-235. This Court has held that a State may not apply criminal



sanctions to require that a carrier secure a state certificate for intrastate operation without prior recourse to the Interstate Commerce Commission to determine whether the carrier's conduct conformed with an ICC certificate issued to it under the Motor Carrier Act. *Service Storage & Transfer Co. v. Virginia*, 359 U.S. 171. See also, *Jones Motor Co. v. P. P.U.C.*, 361 U.S. 11. Resort to the administrative agency is thus required of a State as a precondition to institution of criminal prosecution by it. In this area of activity the difference between a State and the United States is not apparent.<sup>21</sup>

(c) Accordingly, any inference that the Government would draw of the inapplicability of the doctrine of primary jurisdiction in a private antitrust action, based on its assumed inappropriateness in either civil or criminal governmental actions, is too dubious to be valid. And that is enough for today.

6. Apart from the claimed unavailability of a suitable procedure by which to secure NLRB adjudication, the Gov-

<sup>21</sup> The Government suggests that to permit "an administrative agency to decide portions of a criminal case might present serious constitutional questions involving the right to trial by jury" (Govt. br. p. 80). Like much of its argument, the suggestion is too offhand to be worthwhile. Overlooked is that administrative determination of an issue under safeguards of adequate notice, hearing, and appeal has been sustained as a sufficient predicate for a criminal prosecution (*Yakus v. United States*, 321 U.S. 414, 431-443), with explicit reliance on primary jurisdiction as analogous (*id.* at 433); furthermore, the determination whether a subject is within or without the scope of mandatory bargaining might be considered a question of law not within the province of the jury in any event; finally, an administrative determination adverse to the alleged offender might be treated differently from a favorable determination. The article which the Government cites is a carefully qualified statement which seems to exclude the present situation from its concern. Lastly, whichever way it turns, the Government must still face the propriety of jailing a man on a hypothesis which the administrative agency in whose special competence the determination lies might reject.

ernment urges that the statutory design of the NLRA is opposed to primary jurisdiction (Govt. br. pp. 81-85). We turn to this contention.

(a) The preemption rationale is obviously apposite to support primary jurisdiction as part of the dominant statutory drive to channel through the NLRB labor questions over which it has cognizance. The Government counters that "the preemption doctrine is largely designed, not to prevent courts from adjudicating questions which the Board can adjudicate, but to bar the application of substantive State law upsetting the balance of power between labor and management expressed in the national labor policy" (Govt. br. pp. 81-82). The Government turns the evolution of preemption in the labor field on its head. The original premise of the preemption of state action was that not even a federal court could act in a dispute committed to adjudication by the NLRB (Pet. br. pp. 111-112). And a federal court could not act even though the source of right invoked before it was the NLRA itself.<sup>22</sup> For identity in substantive law could not assure uniformity of interpretation and application were adjudication dispersed among the multitude of federal courts. Not the source of law invoked, but the conduct committed to control through the NLRB, was thus from the beginning the critical determinant in excluding federal no less than state court action. This was explicitly articulated by this Court. "Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal. . . . A multiplicity of tribu-

<sup>22</sup> *Amazon Cotton Mill Co. v. Textile Workers Union*, 167 F.2d 183 (C.A. 4); *Amalgamated Association v. Dixie Motor Coach Corp.*, 170 F.2d 902 (C.A. 8); *California Association v. Building Trades Council*, 178 F.2d 175 (C.A. 9); *Schatte v. Theatrical Stage Employees*, 182 F.2d 158, 165-166 (C.A. 9), cert. denied, 340 U.S. 827; *Van Zandt v. McKee*, 202 F.2d 490 (C.A. 5).

nals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law." *Garner v. Teamsters Union*, 346 U.S. 485, 490-491. Action by a state court is thus precluded, as had like action by a federal court from the very outset, even though it is the NLRA itself that the state court undertakes to enforce. *Local Union No. 25, Teamsters v. N.Y., N.H. & Hart. RR. Co.*, 350 U.S. 155, 158, 161. When at issue "is conduct of which the National Act has taken hold . . . a State cannot afford a remedy parallel to that provided by the Act." *Amalgamated Meat Cutters v. Fairlawn Meats*, 353 U.S. 20, 23. Accordingly, contrary to the Government's contention, dissimilar state substantive law accentuates, but does not explain, the reason for preemption.

(b) As evidence of a statutory design inconsistent with primary jurisdiction, the Government relies upon judicial power to redress as a breach of contract conduct which also constitutes an unfair labor practice (Govt. br. p. 82). This is extraordinarily uncritical. Judicial power is allowable in this area, whether by means of direct enforcement or as an adjunct to arbitration, because it is compatible with collective bargaining and fulfills the efforts of the employer and the union to put and keep their own house in order.<sup>23</sup> It promotes the autonomous relationship of management and labor which is the law's high aspiration. But the NLRB's control remains paramount in the case of judicial enforcement of a contract insofar as it duplicates the statutory duty. *Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 101, n. 9. And so too of arbitration. The Board defers "provided the procedure was a fair one and the results not repugnant to the Act"; in case of conflict "the Board's ruling would, of course, take precedence;" "The superior authority of the Board may be invoked at any

<sup>23</sup> Dunau, *Contractual Prohibition Of Unfair Labor Practices: Jurisdictional Problems*, 57 Colum. L. Rev. 52 (1957).

time." *Carey v. Westinghouse Electric Corp.*, 375 U.S. 261, 270-272. In all this there is no slightest intimation that the NLRB's role is secondary or the judicial role parallel. On the contrary, the power of the NLRB to intervene when the contractual remedy goes awry strongly supports the appropriateness of primary jurisdiction. For it recognizes the special competence of the NLRB in the overlap area and this is the keystone of primary jurisdiction.

(c) Conduct which constitutes an unfair labor practice under § 8(b)(4) of the NLRA—roughly secondary boycotts and jurisdictional disputes—also gives rise to an action under § 303 of the Labor Management Relations Act for money damages to compensate for the harm the conduct caused enforceable by the injured private party in a state or federal court independently of the NLRB. *Teamsters Local 20 v. Morton*, 377 U.S. 252. Relying upon this statutory exception, and a minority report supporting a rejected proposal, the Government urges that Congress has itself repudiated the need for oversight by the NLRB (Govt. br. p. 83). But the history of this exception discloses just the opposite.

In 1947, a minority of the Senate Labor Committee proposed, and Senator Ball thereafter introduced and strongly supported, an amendment which would allow private persons direct recourse to federal district courts for injunctions to restrain § 8(b)(4) violations only substantially free of the restrictions of the Norris-LaGuardia Act. S. Rep. No. 105, 80th Cong., 1st Sess., 54-56; 93 Cong. Rec. 4834-4838. After much discussion, the proposal was voted down. 93 Cong. Rec. 4847. Rejection was based on two grounds. Enforcement was deemed more suitably entrusted to administrative processes exclusively controlled by a specialized expert agency in which precipitate action would be guarded against by preliminary investigation. It was also feared that private recourse to injunctive relief

uncontrolled by the safeguards of the Norris-LaGuardia Act would reintroduce familiar abuses. 93 Cong. Rec. 4834-4847, 4864, 4868, 6446, 4132-4133, S. Rep. No. 105, 80th Cong., 1st Sess. 56.

Illustrative of the sentiment which prevailed are the statements of Senators Ives, Morse, and Smith. Senator Ives stated that (93 Cong. Rec. 4839):

• • • [The] proposal revives the injunction upon the request of an employer. • • • I deplore a condition which in any way, shape, or manner will revive the flagrant abuses which brought about the enactment of the Norris-LaGuardia Act. I think the pending amendment opens the door; it is the entering wedge.

Senator Morse declared (93 Cong. Rec. 4841):

It has been my consistent endeavor while this legislation has been under discussion to vest determination of labor problems so far as it is humanly possible to do so in a single organization that is expert in labor problems. I assume that if the debates on this bill have served no other purpose they have demonstrated to all Members of the Senate the complexity and difficulty of this field. Labor problems are complex; as complex, indeed, as our entire social structure, since the great mass of our people are workers. It is a field which has been growing even more complex as our society has come to depend more and more upon the output of large industrial enterprises. Nor will these problems be simplified if the legislation which we have here proposed becomes law. Close day-to-day contact with these problems is necessary if able persons are to keep themselves even reasonably informed.

I am confident, despite the high regard in which I hold the district judges of the United States, that they have neither the background, the desire, or the time, to become experts in these matters. It is one thing to grant to the district courts, upon application of the Board, an interim power to maintain the status quo pending resolution of the problem by the body



which we have selected as the expert body to handle such problems. It is quite a different thing to do what this bill proposes, namely, to throw these matters for final decision into the laps of the approximately 250 district judges of the United States, some of whom may have some knowledge of the field, but all of whom can certainly not pretend to be experts. . . .

. . . I cannot be convinced that it is sound legislation to disperse the authority over these problems, to draw into the orbit of their handling, a host of district attorneys and Federal judges without competence in the field or, by splitting up authority among all the district attorneys and district judges of the land, to make impossible the development of a uniform body of precedent and decisions, harmoniously integrated with each other over the entire economy.

Senator Smith said (93 Cong. Rec. 4843):

We decided, after debating the question, that instead of opening these cases to direct attack by employers aggrieved, it was wiser to consider them as unfair labor practices, and put them under the National Labor Relations Board. I feel that as we have broadened the scope of the National Labor Relations Board and the scope of the Wagner Act to include unfair labor practices by labor organizations as well as by employers, our logical procedure in dealing with these questions is through the Board, placing the responsibility on the Board to deal with such cases, whether on the one side or the other.

Congress specifically and deliberately chose, in short, to retain the "administrative law approach," and rejected the "so-called court approach." 93 Cong. Rec. 4132. Impressed "that opposition to restoring the injunctive process even in cases of secondary boycotts and jurisdictional strikes seems to be so strong," Senator Taft offered as a compromise alternative the creation of a cause of action *for money damages only* for the conduct proscribed by § 8(b)(4) as unfair labor practices. 93 Cong. Rec. 4843-4844. § 303 of the Labor Management Relations Act, em-

bodily this compromise, was thereafter introduced and enacted. 93 Cong. Rec. 4858-4860, 4874.

The history of this limited statutory exception, confined to money damages for a narrow class of violations, confirms that for the main body of regulated activity Congress sought the benefits of expertness and uniformity through centralized administration. The Government's contrary inference would draw meaning from an isolated reading of the exception to the exclusion of the dominant design. This was not the way this Court read the statutory scheme when it fashioned the preemption doctrine, nor should it be read that way in considering the like demands of primary jurisdiction.

7. In this case, through the Government's brief, the NLRB has expressed its judgment that market operating hours constitutes a mandatory subject of collective bargaining. By this means the function of primary jurisdiction has for this case been indirectly served. But the question remains for the future. Few cases can command this Court's attention, and the benefit of the NLRB's judgment is ordinarily unavailable at a lesser level outside its own procedures. The administrative determination should in any event enter at the commencement of the proceeding, not for the first time at its climax. And it should be the product of the discipline of the agency's own procedures, not come merely by way of amicus participation in another proceeding.

It would be foolish to say that there are no perplexities to be solved in meshing recourse to the NLRB with an antitrust action. But granted, as it is, that the issue comes "within the special competence of the administrative agency" (Govt. br. p. 73), procedural problems are to be solved, not used as reasons for rejecting primary jurisdiction. We ought not to add judicial immobility to Judge Learned Hand's distress that when administrative agencies "get into grooves, then God say you to get them out

of the grooves." " Nor has this been the way of judicial statescraft. Otherwise *Texas & Pacific R. Co. v. Abilene Cotton Oil Co.*, 204 U.S. 426, would never have been born. For *Abilene* as the pioneer of primary jurisdiction was fashioned "in a situation where the face of the statute gave the Interstate Commerce Commission and the courts concurrent jurisdiction." *Far East Conference v. United States*, 342 U.S. 570, 575. It "was one of those creative judicial labors whereby modern administrative law is being developed as part of our traditional system of law." *Ibid.* This case is part of this mainstream. The governing philosophy, stated in another context but applicable here as well, is that "court and agency are not to be regarded as wholly independent and unrelated instrumentalities of justice, each acting in the performance of its prescribed statutory duty without regard to the appropriate function of the other in securing the plainly indicated objects of the statute. Court and agency are the means adopted to attain the prescribed end, and so far as their duties are defined by the words of the statute, those words should be construed so as to attain that end through coordinated action." *United States v. Morgan*, 307 U.S. 183, 191. See also, *Whitney National Bank v. Bank of New Orleans*, Nos. 26, 36, Oct. Term 1964, decided Jan. 18, 1965.

### III. REPLY TO JEWEL'S ATTACK UPON THE DISTRICT COURT'S UNDISTURBED FINDINGS OF FACT

1. At the heart of Jewel's position is its view that the District Court's findings of fact were "wholly swept aside" by the Court of Appeals (Res. br. pp. 2-3, 4, 11, 14). But those findings were unreversed and irreversible.

Jewel's freewheeling is barred by Rule 52(a) of the Federal Rules of Civil Procedure: "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of

<sup>24</sup> Hand, *The Spirit of Liberty*, 241-242 (3d ed. 1960).

the credibility of the witnesses." The finality which attaches to findings "unless clearly erroneous" extends to all elements of the fact equation, whether weight, inference, or credibility,<sup>25</sup> including "factual inferences from undisputed basic facts. . . ." <sup>26</sup> "It is applicable to all classes of findings in cases tried without a jury whether the finding is of a fact concerning which there was a conflict of testimony, or of a fact deduced or inferred from uncontradicted testimony." <sup>27</sup> So too a "choice between two permissible views of the weight of evidence is not clearly erroneous." <sup>28</sup> Hence, as the Court of Appeals has uniformly held, "This rule applies to all reasonable inferences of the trial judge, for it is for him to determine the propriety of the inferences and conclusions to be drawn. His is the primary function of finding the facts and choosing from amongst conflicting factual inferences those which he considers most reasonable. Even where there is no dispute about the facts, if different reasonable inferences may be drawn from the evidence, we are forbidden to disturb the findings based on such inferences unless they are clearly erroneous." <sup>29</sup>

<sup>25</sup> *Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 339 U.S. 605, 609-610; *United States v. Yellow Cab Co.*, 338 U.S. 338, 341-342; *United States v. United States Gypsum Co.*, 333 U.S. 364, 394; *Walling v. General Industries Co.*, 330 U.S. 545, 550; *Anderson v. Clemens Pottery Co.*, 328 U.S. 680, 689.

<sup>26</sup> *C.F.R. v. Duberstein*, 363 U.S. 278, 291.

<sup>27</sup> Note of Advisory Committee on Rules for Civil Procedure to Rule 52, Fed. R. Civ. Proc.

<sup>28</sup> *United States v. Yellow Cab. Co.*, 338 U.S. 338, 342.

<sup>29</sup> *Central Ry. Signal Co. v. Longden*, 194 F.2d 310, 317 (C.A. 7); *McDermott v. Baumgarth Co.*, 286 F.2d 864, 868 (C.A. 7); *Snorggrass v. Sears, Roebuck and Co.*, 275 F.2d 691, 693 (C.A. 7); *Shapiro v. Rubens*, 166 F.2d 659, 665, 666 (C.A. 7). And see, *United States v. Allinger*, 275 F.2d 421, 423 (C.A. 6); *United States v. Aluminum Co.*, 148 F.2d 425, 433 (C.A. 2).

The District Court's findings of fact thus came to the Court of Appeals armored by the "clearly erroneous" rule and that court's correct understanding of the finality it extends. And the findings have enhanced value because they are not the uncritical regurgitation of submitted findings but are "the product of the workings of the district judge's mind" evincing a conscientious thinking through of the evidentiary material. *United States v. El Paso Natural Gas Co.*, 376 U.S. 651, 656-657. Those findings were not and could not be disturbed. True, the Court of Appeals stated that the record "sustains the material allegations of the complaint" (R. 692-693, emphasis supplied), but the key word is "material." The Court of Appeals did not set aside findings but instead rendered them irrelevant based on its view of the law. In that court's view there were only two facts relevant to show a violation: (a) the fact of the limitation of market operating hours, and (b) the fact that its incorporation in the collective bargaining agreement resulted from the process of joint negotiations. The Court of Appeals did not deny the labor attributes of the limitation, but held that determination of marketing hours was an exclusive managerial function, with the consequence that the business hours fixed by the merchant controlled the working hours required of his employees regardless of the detrimental impact on the laborer of the hours of the day and the days of the week that work would be compelled.<sup>30</sup> Similarly, the Court of Appeals did not deny that no union-businessmen conspiracy existed, but held that it was unnecessary, it sufficing that an agreement was reached as a result of

<sup>30</sup> Contrast this Court's decision in *Amalgamated Association v. W.E.R.B.*, 340 U.S. 383. The Wisconsin Public Utility Anti-Strike Law, Wis. Stat., 1949, § 111.58, provided that, in the event of arbitration of new contract terms, "The arbitrator shall not make any award which would infringe upon the right of the employer to manage his business. . . ." This Court cited the application of this provision as one example of "direct conflict" with the National Labor Relations Act. 340 U.S. at 398-399.



joint negotiations even though the bargaining was at arm's-length. The Court of Appeals thus accepted the findings but innovated new rules of law which deprived the findings of materiality.

Furthermore, to say that the Court of Appeals undid the findings is to attribute to it displacement of pivotal factual determinations without a word in the opinion either identifying the disfavored finding or explaining the reason for its rejection. It would thus impute to that court irresponsibility in the extreme. That is not the posture of this case. We have simply undisturbed findings giving rise to divergent views of the law pertinent to ascertainment of their legal consequences. Insofar as the findings go, therefore, they come here protected not only by the "clearly erroneous" rule but sheltered in addition by the two-court rule. "A court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error." *Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 336 U.S. 271, 275.

2. Jewel's attempt to undo the findings is a hodgepodge of irrelevancy, inaccuracy, attenuated inference, and emphasis of peripheral circumstances. It reveals both the invulnerability of the findings and the danger of exposing labor activity to the tactic of making a virtue of weak evidence by the cliché that "the conspirators were loath to confess their real objectives" (Res. br. p. 24). We treat Jewel's points substantially in the order it makes them.

(a) Although the "sale" of the product is in terms within the work jurisdiction of the butcher under the self-service contract (R. 46-47), Jewel urges that this is a misnomer because the sale is not completed until the cashier collects the money from the customer (Res. br. p. 3, n. 1), and butchers are not salesmen (*id.* at 13-14). Jewel ignores the fact that the heart of salesmanship consists, not in col-

lecting the customer's money, but in persuading the customer to buy the product by instilling confidence in the quality, price, and service. Customer satisfaction with the self-service method of vending meat drastically diminishes without a butcher in attendance to provide custom cutting and other personal service essential to selling (Pet. br. pp. 50-53). This is one element in the District Court's finding that it is impractical to operate a self-service meat department without butchers or other employees on duty. This factor cannot be explained away by the assertion, totally without evidentiary support, that the reference to "sale" in the self-service contract is "doubtless . . . a carry-over of the traditional language from the service market contracts . . ." (Res. br. p. 3, n. 1).

(b) To show that the limitation of market operating hours goes beyond fulfilling the butchers' wish not to work at night and to protect their work from being taken by others, Jewel relies on a newspaper story appended to its brief (Res. br. pp. 3, 57). We do not pause to consider whether the story supports its view or not. For we rely on the findings, based on the record, for our position. We think it a fair measure of Jewel's undisciplined treatment of facts that an extra-record newspaper story, constituting the rankest hearsay, is solemnly invoked as a solid basis for importuning the exercise of judicial judgment favorable to it.

(c) Jewel urges that the contractual limitation of market operating hours originated in 1947, not 1919 (Res. br. pp. 5-7).

(i) Dating the limitation from 1947 was a brand new thought which Jewel expressed for the first time in the Court of Appeals but had not presented to the District Court. It is axiomatic that no matter may be urged on appeal which has not been tendered in the trial court. In particular, a plaintiff "must" at the least adhere "to the theory of facts" it "presented at the trial." *Peters v.*

• *Fitzpatrick*, 310 F.2d 704, 706 (C.A. 7). Jewel's theory of facts at trial is in conflict with its theory on appeal. In its complaint (R. 22, ¶ 15), and in its proposed finding of fact 15, Jewel in the District Court dated the limitation as "Beginning at least 10 years ago. . . ." That would make it July 1948 as of the time the complaint was filed and December 1952 as of the time the finding was proposed. The new 1947 date was on appeal picked from the thin air just as the abandoned 1948 and 1952 dates had been. .

(ii) Jewel picks 1947 because the agreement executed that year, under the heading "Working Hours," contained the words "Market operating hours shall be 9:00 A.M. to 6:00 P.M., MONDAY THROUGH SATURDAY, inclusive" (R. 128x, Art. III(c), Res. br. p. 6). These words were new. But the 1947 agreement, like all preceding and subsequent agreements, also contained the words, with variations as to the specific hours, "It is expressly understood that no customer shall be served who comes into the market before or after the hours set forth . . ." (Pet. br. pp. 14-15). It is the latter prohibition which, from 1920 to the present, operates to close the market at night. The new words incorporated in 1947 added nothing to this limitation. The reason for the new words is clear on the face of the 1947 agreement. It specified the working hours as 8:30 A.M. to 6:00 P.M., Monday through Saturday, and the marketing hours as 9:00 a.m. to 6:00 p.m., Monday through Saturday (R. 128x, Art. III(a)(c)). Because of the one-half hour earlier starting time for work, it was necessary separately to list the marketing hours. That was not true of the preceding 1946 agreement where the starting time for work and marketing was the same (R. 124x, 125x, Art. III(a), VII(a)).

(iii) Jewel ascribes the new 1947 words to union anticipation of self-service meat department operation (Res. br. p. 6). This is fanciful. All that the record shows is that "prior to 1948, we [Jewel] made surveys across the country and the growth of self-service markets" (R. 157). It

would have taken remarkable clairvoyance for the unions in 1947 to change the agreements—assuming, indeed, that the changed wording originated with the unions at all—based on unknown “surveys” by Jewel at an unspecified time “prior to 1948.”

(iv) Jewel states that “the record does not show,” and by that device impliedly suggests, that “in the 1920’s and early 1930’s” the market may have remained open at night, with the owner-butcher doing the work, and with the union butchers going off duty (Res. br. p. 6). The record does not show this because it shows just the opposite. The contracts from the beginning were explicit that “no customers will be served . . .” (Pet. br. p. 14), not that a customer may be served but only by an owner-butcher. And the contracts were also explicit that overtime would be performed only “behind locked doors . . .” (*ibid.*). A market does not remain open behind locked doors. Finally, the evidence is explicit that union officials “went around to the markets . . . to . . . close them down . . . on Sundays and at nights after 6 o’clock . . .” (Pet. br. p. 48):

The District Court’s finding is thus surely right, not clearly erroneous, in fixing 1919 as the origin of the limitation upon market operating hours

(d) Jewel asserts that “Among the advantages of self-service and longer hours is the fact that both reduce the capital cost per item sold” (Res. br. pp. 8, 48-49). There is no evidence to support this assertion. As the District Court found, “even if the self-service meat departments could operate at night without employees, there is no showing that such operations would result in economies or lower prices” (R. 677). The showing that exists is the other way. Those stores in which Jewel sells fresh meat after 6:00 p.m. earn much less than those in which fresh meat is not sold after 6:00 p.m. (Pet. writ of cert. pp. 42-44, 36a-39a).

And Jewel’s praise of the self-service system of vending is pointless (Res. br. p. 8). The collective bargaining agree-



ments explicitly provide that any food store operator is entirely free to choose either the service or self-service method as he pleases (Pet. br. p. 8). Nothing in the limitation upon market operating hours prevents a retailer from operating a self-service market rather than a service market if that is his wish. As of December 20, 1961, Jewel operated 206 self-service markets and 15 service markets (Pet. br. p. 9). The limitation does not prevent Jewel, or any other operator, from converting all its markets to the self-service system. Indeed, since the great trend is towards self-service operation (Pet. br. pp. 9-10), it is apparent that the limitation does not disfavor self-service vending.<sup>31</sup>

(e) Disregarding irrelevance, Jewel's stress of the inconvenience to consumers resulting from the absence of night shopping is vastly overstated (Res. br. pp. 8-9). Thus:

(i) The very witnesses called to testify to personal inconvenience showed that each had ample shopping time. Helen Kmietek's husband is home each day at 4:00 p.m., and she herself has Friday off (R. 318-319); Rosemary Gioia has the family car available to her three of the five weekdays (R. 321); Helen Mueller's work day ceases at 3:00 p.m. and her husband is home all of the day (R. 322-323); Mary Ann Bearley's work day ceases at 1:00 p.m. and her husband is home all of the day (R. 323-324); Roberta Applebaum is home all day (R. 325); Jane Glick works with her husband and is usually free by 5:00 p.m. (R. 327). From the city of Chicago these persons were

<sup>31</sup> Just as pointless is Jewel's assertion that self-service vending does not impair employment or union strength (Res. br. pp. 7, 48-49). The issue is not whether one method of vending is better than another, but whether men shall work at night, as would be required under either system. It may be noted, for the sake of accuracy, that Jewel's tabulation of "Butchers Employed" by chains other than Jewel is erroneous (Res. br. p. 7); the arithmetic is wrong, and it fails to take into account the absence of figures showing the employment of journeymen and apprentices by A & P in 1957.



the prime examples of inconvenience that Jewel was able to muster, yet all have ample opportunity to shop during the week not to speak of Saturday.

(ii) Jewel states that, of 66 percent of the public that normally uses a car for shopping, "56% of the public does not ordinarily have a car available for shopping purposes during daytime hours Monday through Friday" (Res. br. p. 8). This is a grossly distorted statement. The study on which the statement is based states that 56 percent "cannot drive or car is not normally available on weekdays" (R. 29x). If the person cannot drive he cannot possibly be relying on an auto to shop. Furthermore, the study itself shows that the auto is normally available during weekdays, in most cases every day of the week, with only 13 percent of the group which was sampled stating that the car was not available any day of the week (R. 30x). Also distorted is Jewel's statement that consumers had to buy an unsatisfactory food to substitute for meat (Res. br. p. 9). The study states that 14 to 24 percent of the group sampled reported that they "Have had an experience where an unsatisfactory substitute had to be served to family" (R. 29x). As the maker of the study testified (R. 311):

Q. The answers to the question "Have you had an unsatisfactory experience," for a woman of sixty-five could cover any unsatisfactory experience at any time during the sixty-five years of her life, is that right?

A. Yes.

Q. So that this could cover one unsatisfactory experience during the lifetime of any one of the interviewees, is that correct?

A. Yes.

(iii) The survey conducted by Jewel shows that, despite a lengthy propaganda statement on the questionnaire submitted to the customers (R. 23x), of the 100,000 questionnaires distributed (R. 150), Jewel received a total return of but 18,775 of which 2,028 stated that they did not desire night shopping (R. 24x). What is noteworthy

about the survey is, not that 16,747 expressed a preference for night shopping one or more nights a week, but that 81,225 were so indifferent to the matter that they did not even bother to execute the questionnaire. Thus, of the 800 distributed at the 339 Madison store, there were 34 returns; of the 600 distributed at the 1518 Morse store, there were 9 returns; of the 600 distributed at the 3318 Bryn Mawr store, there were 2 returns; of the 1,000 distributed at the 8938 Commercial store, there were 9 returns (def. ex. 2, pp. 4, 5, 6, 7). And these stores are representative.

(f) Jewel contends that the allowable sale of poultry after 6:00 p.m. without employees on duty, in contrast to the limitation on the sale of fresh meat, shows that the purpose of the limitation is anticompetitive rather than betterment of wages, hours and working conditions (Res. br. pp. 10, 14, 48). This attenuated inference is destroyed by the history of the sale of poultry.

The sale of "frozen fresh poultry, cut-up or whole" after 6:00 p.m. originated with the 1955-1956 agreements (cf. R. 162x, 167x with R. 153x, 154x, 157x). The employers had urged that, since frozen poultry was obtainable after 6:00 p.m. in competing papa and mama stores and in delicatessen stores, it should be available for sale in their own stores after 6:00 p.m.; the unions acceded to this request in fairness to the employers who employed the butchers represented by them (R. 600, 613). The sale of "fresh poultry, cut-up or whole, processed on the premises" originated with the 1957-1959 agreements (cf. R. 162x, 167x, with R. 33, 47). The sale of frozen poultry after 6:00 p.m. granted in 1955 had made inroads into the sale of fresh poultry; preparation of fresh poultry for sale is the work of the butchers represented by the unions and this work was being lost as a result of the inroads from the sale of frozen poultry; to safeguard the work of the butchers they represented the unions agreed to the sale of fresh poultry after 6:00 p.m. (R. 600, 613).

There is thus nothing sinister in the allowable sale of poultry after 6:00 p.m. The post-6:00 p.m. sale of "frozen fresh poultry" originated in response to the employers' plea that relaxation of the limitation was necessary to meet competition; it is therefore procompetitive. The extension of post-6:00 p.m. sale to "fresh poultry" originated in the need to safeguard the work of butchers from loss to others; it is therefore rooted in work protection. No "logic" requires that, because poultry is sold after 6:00 p.m., fresh meat must be too. The products, problems, and history are different. Indeed, the contractual treatment of "fresh beef, veal, lamb, mutton or pork" as a special self-contained product group (Pet. br. p. 8) corresponds with the use of the same classification by the United States Department of Agriculture.<sup>32</sup> And, if the true objection to the 6:00 p.m. limitation on the sale of fresh meat is the exception of poultry from it, that can easily be remedied (and Jewel's logic served) by eliminating the exception. More fundamentally, human behavior is not controlled or explained by a syllogism. Compromise and adjustment is the best that people can manage in labor relations as elsewhere.

(g) Jewel also inveighs against a 1955 agreement authorizing the Cry-O-Vac wrapping of hams off the premises, such hams *not* to be sold after 6:00 p.m. (R. 110, 116, Res. br. pp. 10-11). To wrap hams off the premises means that the work is to be performed by employees other than the meat department employees. Surely the unions have the right to bargain on the subject of whether certain work will be done by the employees within the meat department or by others. And surely, if the unions agree that the work may be done by others, they are also free to agree that all employers may do it by others, just as

<sup>32</sup> Meat Consumption Trends and Patterns, Agriculture Handbook No. 187, 4, 23, 34 (U.S. Dept. Agric. 1960).

Jewel has always insisted should be the case (Pet. br. pp. 12-13).

(h) Jewel urges that the 54 contractual marketing hours in the week, in contrast with the 40 contractual straight-time working hours during the week, shows that the limitation upon marketing hours is unrelated to control of working hours. (Res. br. pp. 12-13). This is silly. There is only one ending time and that is 6:00 p.m. for both working and marketing. True, the agreements provide that "At the Employer's discretion overtime at overtime rates may be worked after eight (8) hours in any one day and behind locked doors after 6:00 p.m." (R. 17x, 18x, § 4.4, emphasis supplied). But since overtime after 6:00 p.m. may be worked only "behind locked doors," and therefore when the market is closed for business, there is minimal occasion for it (Pet. br. p. 11, n. 3). Performance of overtime after 6:00 p.m. is "relatively rare"; there is "Practically none" (Pet. br. p. 11). What is "relatively rare" would be turned into regular routine were the market open for business at 6:00 p.m. And that is the nub of the matter.

(i) Jewel contends that "No counter service by butchers is necessary in a self-service market" (Res. br. p. 7), and urges its experience in the Gary-Hammond area in Indiana in support (Res. br. p. 14). But even in that area meat cutters are on duty at least two nights a week, may be on duty additional nights a week as volume of business requires, and are not on duty only if business is light (Pet. br. 53-54, 69). Indeed, Jewel's chief negotiator testified in his deposition, and did not at trial disclaim his answer as accurate to his knowledge, that "In Lake County, Indiana, we are required to have a meat cutter on duty only on Thursdays and Fridays. We are usually open five nights a week. We usually have a meat cutter on duty on Mondays and Tuesdays, in addition to Thursdays and Fridays. Wednesday is a pretty light night, and some of our markets will



not have a meat cutter on duty on those nights" (R. 548). Since this was the information known to Jewel's chief negotiator, it is obviously the information on which he acted in the course of negotiations, and it is therefore artificial in the extreme to suppose that either he or any other negotiator could or would be bargaining on the fictive assumption that employees were unnecessary to night operation of meat departments.

Jewel urges that the possibility of operation of self-service meat departments without employees is apparent from the contractual distinction between "service," "self-service," and "semi-self-service" market operation (R. 30-31, 45, Res. br. p. 15). Jewel utterly misconceives the import of the contracts. Since the contracts are based on the presence of butchers on duty whenever the market is open for the sale of fresh meat, the defined distinction between a service and self-service market is obviously not predicated on the absence of butchers from work. Rather, the distinction is based upon whether the butcher is working in accordance with the service or self-service method of merchandising, and simply states that if a mixed method is used in the sale of fresh meat the market is self-service (R. 30-31, 45). But whatever method is used the contracts contemplate that a butcher will be at work. Jewel's argument is thus devoid of merit, and the more so because presented for the first time to the Court of Appeals, the District Court not having been favored with this particular distortion.

Jewel urges that its claim of the possibility of self-service operation without employees is not belated, it having alleged in its complaint that "there is no necessity for members of the defendant unions being on duty in plaintiff's stores at all hours at which meats are actually purchased by customers; that the incidental tasks of arranging the cuts in the cases and cleaning the cases need not be performed continuously throughout store hours and can be performed by others or can be performed by butchers



some hours prior to the ending of store hours" (R. 20, Res. br. p. 15). The claim that the work "can be performed by others" underscores the reality of the unions' fear of loss of work and the necessity of guarding against it. And the alternative that the work need not be done by anyone was unproved by Jewel and disproved by the unions. Jewel is so enamored with its complaint that it forgets that it could not prove what it alleged.

Jewel scoffs the expert opinion expressing the view that self-service operation without employees is unsatisfactory, urging further that "it is not up to Courts to tell merchants how to run a store" (Res. br. p. 18). But the District Judge saw and heard the experts and fully accepted their testimony as reliable and accurate. The *nisi prius* determination of this matter is conclusive. The antitrust laws do not require judges or unions to surrender their brains to the ukase of a merchant. To Jewel's assertion that we should not be reluctant to put self-service meat operation without employees to the test if we are so certain that it cannot work (Res. br. pp. 18-19), it is enough to say that we are unwilling to experiment with a suggestion that a person can live without oxygen to negate another's foolhardy belief that maybe death will not result. A notion that would be laughed at when expressed at the bargaining table need not be taken seriously just because voiced in the court room. Nor does Jewel face up to the detrimental consequences to the working welfare of the employees of self-service operation of meat departments without personnel even if it could be done (Pet. br. pp. 49-50, 70-73).

Finally, Jewel asserts that its promise that no personnel would be utilized in a self-service meat department to vend fresh meat after 6:00 p.m. should be enough to allay the union's fear of loss of work (Res. br. pp. 20-22). The unions' experience in policing the employers' performance of their present promise not to use personnel in vending products within the unions' jurisdiction that are excepted from the 6:00 p.m. limitation on sale inspires them with

no confidence that the promise would be kept (Pet. br. pp. 49, 68).<sup>33</sup> In any event, "We need not assume that an employer would use such a tactic as here discussed; it is enough that the union could fear it, and seek such a clause to prevent it." *Meat and Highway Drivers Local Union No. 710 v. N.L.R.B.*, 335 F.2d 709, 716 (C.A.D.C.).

(j) Jewel asserts that if work load is increased by self-service meat operation without personnel, the unions are free to bargain for an increase in staff to carry the added volume of work (Res. br. p. 19). So they are. But there is certainly no assurance that they would succeed and thus no assurance that the added volume of work would not be absorbed by increasing the load of the existing complement of employees without hiring new help. In seeking to preserve the existing work load from increase, the unions are entitled to take a position in favor of the *status quo* and so avoid guessing whether extension of

<sup>33</sup> The instance of cheating uncovered in the very course of trial is ascribed by Jewel to entrapment by a disgruntled former Jewel butcher, one Walter Santeler (Res. br. pp. 20-21). Insofar as this is an attack on the witness' credibility, it is enough that the District Court saw, heard, and believed him. This is conclusive. And the cold record fully supports his reliability. At the time of trial the witness was employed as a head meat cutter at A&P (R. 474), for whom he had been working since May 1961 (R. 481, 482); he had worked for Jewel from January 1947 until May 1961, progressing from apprentice to head meatcutter (R. 476); he was used by Jewel to open the meat markets in new stores (R. 477-478, 480, 481); he resigned from Jewel in May 1961 because he was not given other jobs which would fit him for advancement (R. 481, 505-506, 514). His was not opinion testimony. He related objective, naked facts which, if inaccurate, were easily capable of contradiction by witnesses produced by Jewel. None were produced. His testimony is wholly uncontroverted. As to hamburger "adulterated" by the witness (Res. br. p. 20, n. 5), the incident occurred in April 1959, more than two years before his resignation in May 1961, and brought nothing but a reprimand (R. 33x). One incident in fourteen years of employment is the mark of an exemplary work record. It takes a good deal more than this to taint a witness as a liar on a cold record.

marketing hours would or would not adversely dislocate the existing work load.

(k) Apparently for the purpose of stigmatizing Carl Bromann, secretary and treasurer of Associated Food Retailers, as a conspirator, Jewel relies upon a conversation between Bromann and E. T. Vorbeck, Jewel's chief negotiator (Res. br. pp. 22-23). On October 11, 1957, at Bromann's office, Vorbeck threatened Bromann that he and Associated would be named as co-defendants in a lawsuit if a satisfactory modification of the marketing hours limitation was not negotiated (R. 378, 558-559). To justify this threat, Vorbeck stated to Bromann that Associated was "one of the principal opponents to the extension of night-operating hours..." (*ibid.*). Jewel relies upon this accusation, but there is not an iota of evidentiary support for it, and accusation does not substitute for evidence. Jewel states that "Bromann did not deny the accusation when it was made" (Res. br. p. 23), but neither did he affirm it, and no adverse inference can be drawn from Bromann's disinclination to debate the subject with his accuser. On his part, Vorbeck did not deny, but did not recall, whether Bromann said, "Why single out Associated, we're just one of the people on the contract, just like you," and whether he "did not mention the fact that he and you and all other employers were in the same position" (R. 378). Jewel also asserts that the unions did not call Bromann to the stand to deny the accusation (Res. br. p. 23). But evidence, not accusation, calls for contradicting evidence. Furthermore, there would in any event be no occasion for the unions to call Bromann, for the District Court had already found that he was not a conspirator and he is of course not a representative of the unions. And Jewel could have called Bromann just as well.<sup>34</sup>

(l) Jewel contends that the limitation upon market operating hours "contributed only one thing to the agree-

<sup>34</sup> Jewel's description (Res. br. p. 23) of Associated's position on market operating hours is hopelessly garbled (Pet. br. pp. 86-88).

ment—it eliminated convenience of shopping hours as an element of competition" (Res. br. pp. 24, 41). But Jewel did not even establish its premise that post-6:00 p.m. shopping would introduce a significant competitive difference. There is no evidence of variation in the unregulated trading hours of grocery departments among competitors, and therefore no showing that disparate shopping hours actually exist as a competitive factor. The evidence is indeed the other way. In general all food stores within a competitive area operate the same number of hours (R. 546). Extension of market operating hours in meat departments therefore foreseeably means, not that competitors will operate their meat departments at different hours of the night, but that within a competitive area the same hours will prevail whatever they are as is the current situation in the grocery departments. Since rival meat departments can be expected to operate the same number of night hours, it can make no competitive difference whether they are open to 6:00 p.m. or later. The additional hours cannot affect the net amount of meat sold, or the price, by any particular store; it will only spread over more hours the sale of the same quantity of meat of the same quality at the same price.<sup>35</sup>

<sup>35</sup> *Amici* supporting Jewel assert that the limitation upon selling time of fresh meat to 6:00 p.m., in contrast with the later selling time of other foods said to be substitutes for fresh meat, results in a decrease in the sale of fresh meat and an increase in the sale of other foods. Irrelevant to the questions on which the writ was granted, the assertion is baseless in any event.

*Amici* echo a thought newly introduced by Jewel in the Court of Appeals on the second appeal. On the first appeal Jewel had argued that night vending of fresh meat would increase its sales of other products as well; both were supposed to suffer from lack of night vending (br. p. 29). At the trial it sought to prove that night vending increases not only sales of fresh meat but total sales of all products; both were supposed to benefit from night vending of fresh meat; as expressed by Jewel's counsel, the "more meat we can sell the more groceries we can sell" (Tr. 186, 187). But the proof actually showed that Jewel's total sales of all products in

(m) Jewel contends that one objective of the limitation of market operating hours is to benefit service markets as against self-service markets (Res. br. p. 25). But the testimony upon which reliance is placed shows, as we have already detailed (Pet. br. pp. 50, 70-71), that the relationship between service and self-service meat departments is such that marketing hours must be alike in both if the butchers' desire not to work at night and not to lose work is to be fulfilled, objects having nothing to do with suppression of commercial competition or preferring one merchandising method over another. To withhold labor from both the service and self-service markets, while al-

its stores which vend meat after 6:00 p.m. are often much less than, and never more than about the same as, total sales of all products in its stores which do *not* sell fresh meat after 6:00 p.m. (Pet. writ cert. pp. 42-44, 36a-39a); neither fresh meat nor other products are either advantaged or disadvantaged by the presence or absence of night vending of fresh meat. Thus, having failed to prove its first assertion at trial, Jewel on appeal advanced an inconsistent assertion which it had never before made and for which it had no evidence at all.

Two giant fallacies underlie the assertion that the 6:00 p.m. closing time results in lesser sales of fresh meat and greater sales of other foods. First is the assumption, confessed to be no more than that (R. 168), that 54 daylight hours per week within which to buy fresh meat is not enough for the consumer to buy all he needs or wants. The findings and evidence contradict this assumption (Pet. br. p. 72, n. 11). It is one thing to say that some consumers may be inconvenienced by lack of night shopping; it is quite another thing to say that any consumer actually buys less fresh meat because it is sometimes inconvenient to purchase it before sundown. Fifty-four daylight hours are ample access to the market.

The second giant fallacy is the assumption that as a matter of actual dietary habit consumers do substitute other foods for fresh meat. Persons who want to eat steak or lamb chops do not buy fish, chicken, frankfurters, or TV dinners. Given dietary habits as they exist, and ample access to the market during 54 daylight hours per week, it is the sheerest speculation to assert that consumers "are driven to use meat substitutes . . ." (Res. br. p. 48).

(Jewel's briefs in the court below on the two appeals have been lodged with the Clerk of this Court).



lowing the self-service markets to operate without employees (assuming that could be done), would obviously discriminate in favor of self-service vending and give it a distinct competitive advantage over service vending. The resulting competitive superiority of self-service vending would result only from the different consequences of the unavailability of labor to each type of market. And it is elementary that the elimination of that part of competition which is based on differences in labor standards is altogether outside the Sherman Act construing it least favorably to the allowability of labor activity. *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 503-504.

(n) Jewel stresses a 1954 letter from R. Emmett Kelly to the members in which, in opposing "night meat sales," Kelly stated that "True American ideals call for a free enterprise system wherein our members should have rightful opportunity of someday owning their own business" (R. 2x, 95-96), a sentiment against which Jewel inveighs as showing that the purpose of the marketing hours limitation is to "facilitate the transfer of butchers from the employee to owner class . . ." (Res. br. p. 25). A single isolated statement in 1954, during a year when no bargaining negotiations took place (R. 577), is hardly the stuff which fixes the reason for a 45-year old policy. Nor do we apologize for the sentiment expressed. It is completely consistent with the antitrust laws. The bedrock of the antitrust law is, "because of its indirect social or moral effect, to prefer a system of small producers, each dependent for his success upon his own skill and character, to one in which the great mass of those engaged must accept the direction of a few"; "one of their purposes was to perpetuate and preserve, for its own sake and in spite of possible cost, an organization of industry in small units which can effectively compete with each other." L. Hand, J., in *United States v. Aluminum Co.*, 148 F.2d 416, 427, 429 (C.A. 2). Movement from worker to entrepreneur is part

of what we mean when we speak with pride of our classless society.<sup>36</sup>

(o) Another wisp on which Jewel seizes, to show a union "intention to soften competition between the so-called 'chains' and so-called 'independents,'" is the statement attributed to union representative Nielubowski that "We are going to protect the independent fellow" (Res. br. pp. 26-27). This statement does not even identify who "the independent fellow" is or how he was to be protected. Furthermore, the statement was made on November 27, 1957, after agreement had already been reached with all local unions except Local 189 (R. 570), and was made in a context which had nothing to do with market operating hours. The remark was made in response to a proposal for a flexible work day in groups 2 and 1A of Local 189, and in group 2 there has always been night operations and in group 1A night operations were obtained in the 1957 negotiations (R. 570-572).<sup>37</sup>

(p) This long discussion does not exhaust the inadequacy of Jewel's showing. But we end it because if we have not by now demonstrated its tenuous character, we never can. We add only that Jewel's technique is frustratingly difficult to treat with. The half-truth uttered in a casual sentence requires a page to put it in context. The scattering of innuendo is in the same class. So too is the jumble of unconnected facts oriented by no principle which gives them relevance and harbored finally only in an appeal to

<sup>36</sup> The testimony attributed to Kelly as a verbatim quotation at page 26 of respondent's brief, beginning with the words "I meant by that," simply does not exist in the record in the form presented (R. 95), and its reproduction as a quotation of the witness is inexcusable granting the broadest license to the zeal of advocacy.

<sup>37</sup> At page 27 of its brief, Jewel translates the words "nobody profits" into "stabilizing profits," a distortion that the context of the statement (R. 131) makes so clear that it again exceeds the advocate's license.

prejudice. The technique illustrates one reason why Congress withdrew labor activity from the arbitrament of the antitrust laws when the union acts in its self-interest free of abetment of an independent businessmen's conspiracy.

3. Jewel asserts that "labor is beyond the scope of its exemption when it restrains trade beyond what is essential to fix terms and conditions of employment" (Res. br. p. 52). This is the key to the invalidity of Jewel's position. For Congress did not commission judges and juries to decide whether the bargain which fixes terms and conditions of employment is not enough, just about right, or too much. Whether the wages are too high in *Pennington*, or the hours too short in *Jewel*, is a question for collective bargaining, not the antitrust laws.

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